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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1953

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No. 427

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THE FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE,  
*Appellant,*

v.

THE PEOPLE OF THE STATE OF NEW YORK.

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On Appeal from the Court of Appeals of the State of  
New York

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**BRIEF OF APPELLANT**

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February 17, 1954



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**BRIEF OF APPELLANT**

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**OPINIONS BELOW**

The opinion of the Supreme Court of New York, Special Term, Nassau County, is reported in 200 Misc. 557, 105 N.Y.S. 2d. 81. The opinions of the Appellate Division are reported in 281 App. Div. 757, 118 N.Y.S. 2d. 210. The opinions of the Court of Appeals of the State of New York are reported in 305 N.Y. 453, 113 N.E. 2d. 796.

### **JURISDICTION**

This appeal is from the final judgment of the Court of Appeals, the highest court of the State of New York from which a decision in this matter can be had. The petition for appeal was allowed on September 29, 1953. Probable jurisdiction was noted by this Court on December 9, 1953.

The validity of Section 258(1) of the New York Banking Law has been drawn in question on the ground that it is repugnant to the Constitution and paramount laws of the United States and the validity of the State statute has been sustained by the Court of Appeals of the State of New York. Therefore, the jurisdiction of the Supreme Court to review on direct appeal is expressly conferred by Title 28 U.S.C., Section 1257(2).

### **QUESTION PRESENTED**

Is the State of New York empowered to apply Section 258(1) of its Banking Law to a national bank operating in that State and thus prohibit that bank from advertising or otherwise using the word "saving" or "savings" in relation to its banking or financial business in its dealings with the public? Otherwise stated, is the State of New York empowered to prohibit a national bank from quoting in its advertisements and in its business dealings with the public the very words of Section 24 of the Federal Reserve Act which expressly authorize national banks to receive and pay interest on "savings deposits"?

## STATUTES INVOLVED

The pertinent constitutional provision, statutes and regulations are printed in the appendix to this brief.

## STATEMENT

### A. Proceedings Prior to Trial.

The Franklin National Bank of Franklin Square (hereinafter usually referred to as "the Bank"), duly chartered as a national bank by the United States, has engaged in the business of banking at Franklin Square, New York, since the year 1926 (Pl. Exs. 34, 35; R. 85, 600-601).

During the year 1947, a Deputy Superintendent of Banks of the State of New York, wrote Arthur T. Roth, President of the Bank, requesting that the Bank cease using the word "savings" in connection with its advertising and other literature used in its banking business (Pl. Ex. 15A-15C; R. 36, 579-580). This request was based on an opinion of the Attorney General of New York which held that the use of the word "savings" by a national bank was a violation of Section 258(1) of the New York Banking Law which specifically prohibits national banks from using the word "savings" in their advertising or banking business and from soliciting deposits as savings banks (Appendix, pp. 102-103).

The Bank sought the advice of counsel upon the right of a national bank to use the word "savings" and was informed that the New York law could not apply to national banks. This information and an opinion of counsel setting forth this conclusion were transmitted to the Deputy Superintendent of Banks. (Def. Ex.

UU; R. 481, 654.) Having been thus advised by counsel, the Bank continued to use the word "savings" in its advertising and in its business dealings with the general public.

On May 12, 1950, the Attorney General of the State of New York (hereinafter usually referred to as "the State") initiated the instant case by filing a complaint in the Supreme Court of New York seeking to enjoin the Bank from using, in alleged violation of the provisions of Section 258(1) of the New York Banking Law, the word "saving" or "savings" or their equivalent in its business and dealings with the public and from soliciting and receiving deposits as a savings bank (R. 3-5). By amended complaint, the State alleged that the use of the prohibited words by the Bank had deceived the public and that the Bank had usurped the exclusive rights of State savings banks and savings and loan associations (R. 85-86).

The Bank filed its answer on June 19, 1950, which, while denying that it had practiced any deception, admitted that it had used the word "saving" or "savings" in its business. By way of affirmative defense, the Bank alleged that the use of the prohibited words was sanctioned by the federal statutes relating to national banking associations and the duly adopted regulations of the Federal Reserve Board. (The answer cited, *inter alia*, Section 24 of the Federal Reserve Act, Appendix pp. 99-101, which specifically authorizes national banks to "continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same.")

The Bank further alleged that, in so far as Section 258(1) of the New York Banking Law purported to prohibit national banks from using the word "saving" or "savings" or their equivalent, the State statute was invalid because it (a) directly conflicted with the Constitution and the paramount laws of the United States, (b) unduly interfered with the operations of national banks located in the State of New York and frustrated the purposes for which they were organized, and (c) unduly discriminated against national banks and substantially handicapped them in their competition with savings banks and savings and loan associations. (R. 5-8, 86.)

#### **B. The Trial.**

At the trial of the case,<sup>1</sup> the State offered testimony and numerous exhibits showing that the Bank had used the word "saving" or "savings" in newspaper advertisements, other advertising media, signs displayed in the Bank, deposit and withdrawal slips and annual reports of the Bank (R. 21-38, 38-57; Pl. Exs. 1-13, 17-32; R. 529-579, 581-598C). This evidence was not challenged by the Bank which had freely admitted that it had used the word "saving" or "savings" in its business under the claim that Section 258(1) was invalid as applied to national banks (R. 7).

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<sup>1</sup> On July 14, 1950, Special Term, Part I of the Supreme Court of New York entered an order transferring the cause to the Supreme Court, Nassau County, on the ground that, under the National Bank Act, a national bank may be sued only in the county in which it is established (R. 13-15).

The State also sought to show that the Bank had constructed its banking premises so as to simulate the appearance of a savings bank (R. 45-57). This was refuted by the testimony of the Bank's president, Mr. Roth, and the two architects who designed the building showing that in intent and execution the design was unique and was intended to create the impression, in so far as possible, of a department store rather than a bank (R. 87-91, 114-127, 430).<sup>2</sup>

The Bank adduced evidence in considerable detail that it and other national banks were in direct competition with savings banks and savings and loan associations for savings accounts (R. 135-142, 153-160, 170-171, 407-414). A number of bank presidents testified that this competition was "very intense," that it was "particularly extreme" and was "becoming keener all the time" (R. 137-139, 154-155, 170-171). Even the State's witness, Francis J. Ludemann, Deputy Superintendent of Banks, conceded that national banks were in competition with savings banks saying:

"They are each offering their services, competing for the public's acceptance; if that is what you mean by competition, yes" (R. 332).

The evidence showed that the competition in Nassau County came not only from banking institutions in that

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<sup>2</sup> There were explicit findings by both the Trial Court and the Court of Appeals that the Bank did not simulate, or solicit and receive deposits as, a savings bank (R. 656, 685). We do not anticipate that the State will contend otherwise. See discussion, *infra*. pp. 27-32.

County but from New York City savings banks and from savings and loan associations there and in other parts of the country (R. 409-410). It was shown that savings accounts were solicited by the competing institutions through newspapers, periodicals, radio, television, billboards and various other means (R. 409; Def. Ex. EE, R. 411, 642-642D). The State introduced no evidence contradicting the existence and extent of this competition.

It was also shown on behalf of the Bank—without contradiction by the State—that savings accounts constituted a substantial part of the total resources of the Bank as well as other national banks (R. 436-437, 447; Def. Exs. MM, NN, R. 435, 445, 649, 649-651). Likewise, it was shown that the ability of national banks to make mortgage loans depended directly upon their savings accounts and that large amounts of government bonds were purchased with funds resulting from savings accounts (R. 164, 438, 442).

The Bank's witnesses, with long experience as officers of national banks, testified that New York's statutory prohibition of any use of the word "saving" or "savings" substantially handicapped and burdened national banks and discriminated against them in their competition with savings banks and savings and loan associations (R. 104, 110, 140, 157, 170-171). They also testified that the substitute terms for "savings"—"thrift," "compound interest" or "special interest"—forced upon national banks by the statute, were little understood by the public (R. 140, 152, 157-159, 170-171).

The State, on cross-examination, adduced the information that all of the national banks operated under the direction of these witnesses had prospered during the last ten or more years despite the prohibition set forth in Section 258(1) (R. 105-106, 111-112, 145-148, 168). However, on rebuttal, it was shown that this prosperity was due generally to an increase in money in circulation and rising inflation (R. 112, 447). It was also shown that the ratio of savings deposits to demand deposits in national banks in New York had substantially decreased (R. 152, 449-451).

To prove that the public generally did not understand the meaning of the substitute terms for savings accounts which national banks were compelled to employ under the terms of Section 258(1) and that these terms were misleading and ineffective, the bank introduced in evidence the "Hofstra Survey." This survey, conducted under the auspices of Hofstra College, employed the best techniques yet devised in conducting a survey dealing with public opinion (R. 180-181, 182-226). Briefly stated, the results of this survey showed that 85.8% of those interviewed accurately described "savings account"; whereas only 40.8% correctly described "compound interest account," 21.4% correctly described "special interest account," and 19.5% correctly described "thrift account" (R. 358; Def. Ex. CC, Table I, R. 358, 626). It was also shown that 51.3% of those interviewed knew that savings banks offered savings accounts whereas only 7% knew that national banks offered this service (R. 358; Def. Ex. CC, Table

VII, R. 358, 629-630).<sup>3</sup> Moreover, less than 7% knew that national banks handled the other three types of account (*ibid.*). The third phase of the survey showed that 57.7% of those interviewed preferred to open "savings accounts" when they wished to deposit money to earn interest as compared with 21.9% favoring "compound interest accounts," 10.7%, "special interest accounts" and 1.2% "thrift accounts" (R. 358; Def. Ex. CC, Table XIII, R. 358, 634).

It was also developed by the Bank that all mutual savings banks in the State of New York belong to the Federal Deposit Insurance Corporation and all of their deposits are insured in the maximum amount of \$10,000.00 for each account. Furthermore, most savings and loan associations are members of the Federal Savings and Loan Insurance Corporation. (R. 310-313.)

### C. The Trial Court's Opinion.

The Trial Court on May 29, 1951, issued its opinion and decision upholding the Bank's position and dismissing the State's complaint. The Court specifically held that the Bank had in no way deceived the public, stating that all allegations in the complaint charging

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<sup>3</sup> 3.4% answered that a "Federal Bank" handled savings accounts and other answers were broad enough possibly to encompass both savings banks and national banks. Thus, 17.7% answered that any or all banks handled this type of account. See Def. Ex. CC, Table VII, R. 630. In determining these percentages, the persons interviewed were asked to state what kind or what kinds of financial institutions offered the following services; Savings account, compound interest account, special interest account and thrift account.

the Bank with deception or with simulating and holding itself out as a savings bank were completely unfounded, and dismissed these charges (R. 656).

The Trial Court then set forth the evidence adduced at the trial and discussed the constitutional issues involved. It referred to the vigorous competition among banking institutions for deposits. It further referred to the fact, bolstered by the Hofstra Survey and by common knowledge, that the public understands the meaning of the term "savings account" much better than the meaning of the substitute terms forced upon national banks, and that, in the public mind, the term "savings" provokes a much stronger appeal than the substitute terms. (R. 657-658, 662.)

In determining that the State could not deny the use of the word "savings" to national banks, the court expressed its conviction that national banks, which clearly are empowered to advertise, were exercising an implied and incidental power conferred upon them by Acts of Congress (R. S. § 5136, 12 U.S.C. § 24; 38 Stat. 273, 44 Stat. 1232, as amended, 12 U.S.C. § 371) to advertise for "savings deposits" (R. 672).

As the Court said:

"To deny to defendant the right to invite the public by all proper means of expression at its disposal, to make 'savings deposits' with it, is to curtail the power to receive such accounts, to reduce its effectiveness as an agency handling that kind of financing—in short, to defeat one of the main purposes for which it was created by Congress" (R. 669).

The Trial Court held it evident that the New York and federal laws (Section 258(1) of the New York Banking Law and Section 24 of the Federal Reserve Act) "cannot be read together in harmony. There is a violent conflict of legislative authority." (R. 666.)

The Trial Court further found and held that the New York Statute, in forbidding a national bank to display a sign on its premises containing the word "savings," to indicate its right to receive "savings deposits," to print these words on its deposit slips and pass books, or even to use them in its accounting records, and in forbidding the use of the word "saving" or "savings" in all publicity and advertising, was hampering and embarrassing the Bank and restricting it tremendously in obtaining savings deposits (R. 668).

Because of the conflict between the New York statute and paramount federal law and the effect of the State statute in frustrating the exercise by the Bank of the powers, express and implied, granted national banks by Congress and in defeating the purpose for which they were created, the Trial Court held Section 258(1) of the New York Banking Law invalid and void as applied to the Bank (R. 672).

#### **D. The Opinion of the Appellate Division.**

The State appealed the judgment of the Trial Court (R. 1-2). The Appellate Division, with one judge dissenting, reversed the Trial Court's determination and held the State statute constitutional and not in conflict with the federal statutes (R. 679-683). The Appellate Division also reversed the Trial Court's findings of

fact which were inconsistent with its opinion (R. 679). The Bank was permanently enjoined "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public, and from in any way soliciting or receiving deposits as a savings bank" (R. 676).

#### **E. The Opinion of the Court of Appeals.**

The judgment of the Appellate Division was appealed by the Bank (R. 675). The Court of Appeals, by a vote of five to two, modified and affirmed, as modified, the decision of the Appellate Division (R. 684-692). The Court of Appeals found that the Bank had used the word "savings" to bring itself "savings deposits" in competition with savings banks and savings and loan associations in Nassau County and elsewhere (R. 685). However, the Court found no evidence in the record that the Bank had solicited and received deposits as a savings bank and, accordingly, struck from the injunction ordered by the Appellate Division the language "and from in any way soliciting or receiving deposits as a savings bank" (R. 685, 690).

In sustaining the prohibition against the use by the Bank of the word "saving" or "savings" in its advertisements and in its banking or financial business in its dealings with the public, the Court of Appeals upheld the constitutionality of the State statute, expressly rejecting the Bank's contentions to the contrary (R. 686-689). The Court of Appeals found no direct conflict between the pertinent State and federal statutes. It found that the federal statute authorizing national

banks to receive savings deposits was merely "descriptive of a well-known type or kind of bank deposit" and that it did not constitute a "license" to use certain words which are prohibited by the State. (R. 687.) It justified the State prohibition imposed on national banks as forbidding a "misleading description" of the business of receiving savings deposits and paying interest on savings accounts; and as protecting the "citizens against being fooled." Hence, the Court believed the State law could stand despite a "superficial, or seeming, contradiction between the phrasing" of the respective statutes. (*Ibid.*)

The Court referred briefly to the differences between commercial banks, such as the Franklin National Bank, and mutual savings banks and held that, despite the conceded right of national banks to receive savings deposits, any use of the word "saving" or "savings" would deceive people into believing that national banks are mutual savings banks (R. 688). And, in direct conflict with the findings of the Trial Court, the Court of Appeals also concluded that national banks were not impeded in carrying out their lawful purposes by being forced to designate "savings accounts" as "special interest," "thrift" or "compound interest" accounts (R. 688-689).<sup>4</sup>

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<sup>4</sup> The Court of Appeals referred to the fact that the number of "savings type" accounts in national banks had increased and that such banks had enjoyed continued prosperity notwithstanding the challenged State law (R. 689).

The Court emphasized that no other national bank in the State of New York had used the word "saving" or "savings" (R. 688, 689). The record shows the contrary to be the fact (See R. 583).

Finally, the Court of Appeals stated that savings and loan associations are "so similar" in "character and purposes" to mutual savings banks as to justify receiving the same kind of protection offered by Section 258(1) (R. 690).

The effect of the decision of the Court of Appeals modifying the injunction ordered by the Appellate Division was to enjoin the appellant national bank "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public" (R. 678, 690).

In his dissenting opinion (concurring in by Froesel, J.), Fuld, J., found a conflict "patent and irreconcilable" between State and federal law (R. 690). He concluded that the state law necessarily hampered the conduct of banking activities, saying:

"\* \* \* The right to accept 'savings deposits' and maintain 'savings accounts' can mean very little if the bank, by virtue of state statute, must hide that fact or announce it in terms that fail to make it clear. Indeed, to tell a bank that it can receive 'savings deposits' and yet must not publicize the fact is very much like telling a property owner that he may produce vegetables, but must not water or cultivate them." (R. 690.)

Judge Fuld continued:

"The state acknowledges, as, of course, it must, that national banks are empowered, as an incident

of their business, to receive 'savings deposits' and maintain 'savings accounts.' Since those activities are concededly legitimate and in the public interest, there is no basis for the claim that advertising them *in the precise language of the Federal Reserve Act* can be deceptive or harmful. If a national bank conducts only the type of business which the Federal Reserve Act sanctions and if it informs the public of the nature of that business by using only the exact language of the federal enactment, how may it be said—as it is (opinion of Desmond, J., p. 460)—that the state law serves the vital function 'of protecting our citizens against being fooled' ''? (R. 691; the emphasis appeared in the original opinion.)

The Bank filed its Petition for Appeal in the Court of Appeals, State of New York, on September 29, 1953, and the Order Allowing the Appeal was signed by Chief Judge Edmund H. Lewis on the same day (R. 697-698). The appeal papers were docketed in this Court on October 22, 1953. This Court then noted probable jurisdiction in an Order dated December 7, 1953 (R. 701).

#### **SPECIFICATIONS OF ERRORS TO BE URGED**

The Court of Appeals erred:

(1) In holding the New York statute, Section 258(1) of the New York Banking Law, constitutional against the contention that the statute directly conflicts with the purposes of Congress and the paramount federal laws, particularly as expressed in Section 24 of the Fed-

eral Reserve Act as amended (38 Stat. 273, as amended, 12 U.S.C. § 371) and Section 24(Seventh) of the National Bank Act as amended (R.S. § 5136, as amended, 12 U.S.C. § 24(Seventh)).

(2) In holding and concluding that Section 24 of the Federal Reserve Act neither expressly nor inferentially empowers national banks to advertise or in any way publicize the fact that they may accept "savings deposits," although the statute expressly authorizes national banks to accept such deposits.

(3) In holding and concluding that national banks, although empowered to advertise the services which they legitimately may provide, must conform their advertising to a State statute which prohibits use of the very words employed in the enabling federal legislation.

(4) In holding and concluding that the appellant engaged in "a misleading description" of its business and uses "deceptive verbiage" in characterizing savings deposits as "savings deposits" in its advertising although Section 24 of the Federal Reserve Act so characterizes certain of the deposits which national banks are expressly empowered to accept.

(5) In holding and concluding that Section 258(1) of the New York Banking Law does not, in violation of the Federal Constitution, unduly impede national banks in carrying out their lawful purposes and that the admittedly legitimate national banking activity of taking savings deposits is not substantially interfered

with by the State's prohibition of the use of the words "saving," "savings" or their "equivalent."

(6) In holding and concluding that Section 258(1) of the New York Banking Law does not unduly discriminate against national banks and handicap them in their competition with savings and loan associations and savings banks.

(7) In permanently enjoining the Franklin National Bank of Franklin Square "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public."

#### **SUMMARY OF ARGUMENT**

This case involves an attempt by the State of New York to apply Section 258(1) of its Banking Law to a national bank. The State statute prohibits any bank, including specifically a national bank, other than a State mutual savings bank and certain other financial institutions, from using the word "savings" in its banking or financial business or in any advertisement, or from soliciting or receiving deposits as a savings bank. The Appellant, a national bank, upon advice of counsel that the law was unconstitutional and void as applied to it, had employed the word "savings" in good faith to solicit savings deposits and in its banking business. The attempt by the State to show that such use of the word "savings" was, in fact, misleading was completely unsuccessful; both the Trial Court and the Court of Appeals held that no issue of actual deception remained in the case.

## L

**SECTION 258(1) OF THE STATE LAW IS IN DIRECT CONFLICT WITH SECTION 24 OF THE FEDERAL RESERVE ACT AND SECTION 24 (SEVENTH) OF THE NATIONAL BANK ACT.**

**A. The Federal Statutes Clearly Grant National Banks the Right to Accept Savings Deposits and to Advertise.**

Section 24 of the Federal Reserve Act explicitly authorizes national banks "to continue hereafter as heretofore to receive time and savings deposits," and Section 24(Seventh) of the National Bank Act authorizes national banks to exercise all incidental powers necessary to carry on the business of banking. Accordingly, The Franklin National Bank is clearly authorized to receive savings deposits and to inform the general public, by means of appropriate advertising, that it possesses such authority. The most appropriate and effective means of accomplishing this is to employ the term of ordinary meaning—"savings"—which Congress itself had used in granting the authority. In view of these considerations, and since the right to receive savings deposits and use the word "savings" was not made dependent in any way on State law, the State's position that it is empowered to prohibit a national bank from quoting in its advertisements and in its business dealings with the public the very words of Section 24 of the Federal Reserve Act is clearly untenable.

**B. The Legislative History of the Pertinent Federal Statutes. As Well as the General Legislative Design to Equalize State-National Bank Competition, Supports the Bank's Position.**

The legislative history of the 1927 amendments to the Federal Reserve Act, as well as of the original Act, reveals that Congress was well aware that many national banks had long maintained savings departments as an important component of their banking business. The savings business of national banks had grown to such proportions by 1927 that Congress found it necessary to enlarge their statutory powers by lengthening the permitted term of specified real estate loans and by increasing the over-all amount of such loans which a bank could make. The stated Congressional purpose of these and other specified amendments enacted in 1927 was to carry out the established Congressional policy of promoting competitive equality between national and State banks. Accordingly, the inclusion by Congress in 1927 of the authority to continue to receive savings deposits at the same time that it was broadening the powers of national banks and strengthening their ability to compete with State banks contradicts any intention to subordinate the use by national banks of the word "savings" to State control.

**C. The Administrative Construction of the Federal Laws by the Agencies Charged with Their Administration, a Construction Approved by Congress, Supports the Bank's Position.**

The position of The Franklin National Bank that it is authorized to advertise for savings accounts is entirely consistent with an administrative ruling of the

Federal Reserve Board in 1915 that a California statute, construed by the State to subject national banks to penalties for advertising for savings accounts, was not enforceable against such banks. Since Congress re-enacted Section 24 of the Federal Reserve Act several times subsequent to the publication of this ruling, it must, under the re-enactment rule, be deemed to have approved this construction and to have given it the force of law.

In addition, the Comptroller of the Currency has considered the precise question here involved and has ruled that national banks in New York are authorized to advertise for savings, notwithstanding the prohibition contained in Section 258(1) of the New York Banking Law.

Where there is no statutory indication that these administrative rulings are incorrect and where they have been consistently adhered to and followed for a long period of time, they are entitled to great respect and should ordinarily control the construction of the statute.

**D. The State Statute is in Direct Conflict with the Federal Statutes and Must Yield.**

The New York statute directly conflicts with paramount federal law and must yield (Article VI, Clause 2, Constitution of the United States). The leading case of *Easton v. Iowa*, 188 U.S. 220, is particularly pertinent. There, in the face of arguments strikingly similar to those advanced here in support of the New York law, this Court held an Iowa statute invalid as

applied to national banks. It was held that Congress had provided a symmetrical and complete scheme for national banks and that it was not competent for the State legislature to interfere, either with hostile or friendly intentions. Decisions of this and other courts dealing with similar State attempts to regulate the affairs of national banks support this holding.

**E. The State is Not Empowered to Impose Its Own Banking Standards on National Banks. Moreover, the Use of the Word "Savings" by National Banks is Not Deceptive or Misleading.**

National banks are subject to comprehensive regulation by the Comptroller of the Currency under the authority of Congress and, in the instant case, that officer has sanctioned the use by national banks in the State of New York of the words prohibited by the New York statute. Therefore, irrespective of the purposes or motives of the New York Legislature, it is not competent for the State to impose supplementary regulation of the use of the words by national banks.

The history and application of Section 258(1) illustrate that a principal purpose of the law was to prevent the simulation of a savings bank by other banks. Of this charge, the Bank was explicitly cleared. As to the law's avowed purpose of preventing fraud and deception, the law contains contradictions and inconsistencies. The effort of the State to identify the word "savings" exclusively with mutual savings banks must fail since, by the very language of the statute, the term is not reserved for mutual savings banks but its use is authorized by other financial institutions. Further-

more, the State's efforts to identify the word "savings" with mutual savings banks conflicts with the Congressional use of the word with regard to national banks and with the authorized administrative definition of the term. The Bank has used the word "savings" only in a manner consistent with the Congressionally authorized definition of the term in its advertising and in its business. It is curious that a law purportedly enacted to prevent fraud and deception forces national banks to employ substitute expressions for "savings" which the record shows are not understood by, but on the contrary have a tendency to mislead, the general public.

## II.

### **SECTION 258(1) DISCRIMINATES AGAINST NATIONAL BANKS IN FAVOR OF STATE INSTITUTIONS AND HAMPERS AND IMPAIRS THE EFFICIENCY OF NATIONAL BANKS.**

#### **A. National Banks are the Necessary Instruments of Effectuating the Nation's Monetary Policy.**

Congress, by the Federal Reserve Legislation, has created a reserve system of central banking under the control of the Board of Governors of the Federal Reserve. The Board in large part exercises its powers of control over the nation's monetary policy through control of reserves of member banks, both State and national. However, since State member banks may withdraw from the Federal Reserve System at any time, the Board must rely primarily upon national banks, required by law to be members, as the means to carry out its policies. National banks, moreover, hold a substantial amount of all the assets of commer-

cial banks; accordingly, any attempt by a State to impair the efficiency of national banks will, in turn, impair the Federal Reserve System's ability to control the nation's monetary policy.

**B. Since Savings Deposits are an Essential Element of a National Bank's Business, any State Restrictions Affecting the Receipt and Handling of Savings Deposits will Seriously Hamper National Banks.**

The success of all commercial banks, including national banks, obviously depends on their ability to obtain deposits. These deposits are essential to the lending functions of banks, and savings deposits are especially important since real estate loans, which are dependent upon savings deposits, are a profitable source of income. Thus, any State action interfering with the receipt of deposits by national banks tends to impair their efficiency and their ability to compete with State institutions.

**C. Section 258(1) Discriminates Against National Banks and Impairs Their Ability to Compete with State Financial Institutions.**

Competition between national banks, commercial banks, mutual savings banks and State and federal savings and loan associations is intense, particularly in the area in which The Franklin National Bank is located. The State prohibition against the use of the word "savings" discriminates against national banks and places them under a handicap in their competition with the privileged institutions.

Long aware of State attempts to accord privileges to their own institutions, Congress has frequently moved

to prevent State discrimination against national banks and to place such banks on a plane of competitive equality with State banks. Such acts of Congress were designed, not as an indication that national banks were subject to or subordinate to State law, but frequently as a liberalization of restrictive federal legislation regulating national banks to enable them to compete more effectively with State institutions. This Court has frequently recognized and supported this Congressional policy.

The contention that mutual savings banks and savings and loan associations are different from national banks is not relevant to the issues here involved. In an important phase of their respective operations—the soliciting and obtaining of the savings of the public—savings banks and savings and loan associations are in direct competition with national banks. It is in this competition that the State law discriminates against national banks in favor of the privileged institutions. This the State cannot do under the decisions of this Court.

**D. Section 258(1) Unduly Interferes with the Operations and Impairs the Efficiency of National Banks.**

The contention that the New York law does not interfere with the operations or impair the efficiency of national banks is erroneous. It was convincingly demonstrated at the trial of this case that the use of the equivalent terms for “savings”—“compound interest,” “special interest” and “thrift”—was ineffective and that the expressions were not understood by the public. National banks have lost and are continuing

to lose depositors because such banks are not able to advise the general public that they accept savings deposits. The Court of Appeals' answer to this interference with national banks—that such banks have prospered, notwithstanding the prohibitions of Section 258(1)—is immaterial to the issues of this case since it is obvious that deposits might increase despite statutory handicaps. Indeed, the increase in deposits was shown to be due to inflation and an increased money supply. Moreover, the ratio of savings deposits to demand deposits in national banks in New York had substantially decreased.

Since the New York law unduly interferes with the operations and impairs the efficiency of national banks, it must, under the decisions of this Court, be held unconstitutional and invalid as applied to national banks.

## ARGUMENT

### Introduction

The Court of Appeals of the State of New York in reaching its erroneous decision, did, however, recognize certain basic principles of law which have evolved from this Court's long experience with the problem of the federal-state relationship to a central or national banking system.

It has long been settled that Congress has the power under the Constitution to charter and regulate national banks. *McCulloch v. Maryland*, 4 Wheat. 316; *Osborn v. The Bank*, 9 Wheat. 738. The opinions of Chief Justice Marshall in these two cases, which effectively stifled early attempts by the States through ruinous

taxation to destroy the Bank of the United States, laid down the basic foundation on which the law dealing with national banks has been erected. In *McCulloch v. Maryland*, the Chief Justice stated:

“\* \* \* the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.” (*McCulloch v. Maryland*, 4 Wheat. 316, 436.)

The application of this statement to national banks was particularized by this Court in *Davis v. Elmira Savings Bank*, 161 U. S. 275, where it was held as “axiomatic” that any attempt by a State to define the duties or control the conduct of national banks was absolutely void wherever such attempted exercise of authority conflicted with the laws of the United States and either frustrated the purpose of the national legislation or impaired the efficiency of those banks to discharge the duties for the performance of which they were created. See also to the identical effect, *Easton v. Iowa*, 188 U.S. 220; *First National Bank v. California*, 262 U.S. 366; *Anderson National Bank v. Lockett*, 321 U.S. 233.

On the other hand, it is also clear that, generally, national banks are subject to the nondiscriminatory laws of the State in which they are located unless those laws interfere with the purposes of their creation, tend to im-

pair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States. *Davis v. Elmira Savings Bank*, *supra*; *McClellan v. Chipman*, 164 U.S. 347; *First National Bank v. Missouri*, 263 U.S. 640; *Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559; *Anderson National Bank v. Lockett*, *supra*.

In the light of these basic principles, we shall show (1) that Section 258(1) of the New York Banking Law is in direct conflict with the paramount laws of the United States authorizing national banks to receive savings deposits and with the rulings of the administrators to whom Congress has delegated the power of regulating the affairs of national banks, and (2) that the State law discriminates against national banks in favor of State institutions and hampers and impairs the efficiency of national banks in carrying out the functions for which they were created.

Before we enter upon our discussion of these independent grounds showing the invalidity of the State law, we believe it advisable to comment on the attempt of the State to make the central theme of its defense of the law its claim that the purpose of the law is to prevent "fraud," "deception," and "misleading advertising," and to prevent the citizens of the State from being "fooled," a purpose which allegedly is being subverted by the activities of the Bank which the State has caused to be enjoined. These emotion-provoking words and phrases permeated the written and oral arguments of the State in this case before the courts of

the State of New York. And these expressions were repeated (although in much less vehement fashion) in the opinions of the Appellate Division and of the Court of Appeals.

The references to deceptive practices should be clarified and the use of the related expressions must be understood in their proper context. As the Trial Court held, the issue at bar is not one of "wrongdoing" but is simply a test whether the Bank may exercise a power which the State would deny to it (R. 656). This is the proper complexion of this case; it was not changed but was indeed upheld by the Court of Appeals, as we shall now show.

The pertinent language of Section 258(1) of the New York Banking Law is as follows:

"No bank, trust company, national bank, \* \* \* other than a savings bank or a savings and loan association shall make use of the word 'saving' or 'savings' or their equivalent in its banking or financial business, or use any advertisement containing the word 'saving' or 'savings,' or their equivalent in relation to its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank; \* \* \*."

This law may be broken down into three separate components: (1) Prohibiting a national bank from using the words "saving" or "savings" or their equivalent "in its banking or financial business";

(2) prohibiting a national bank from using those words in any advertisement; and (3) forbidding a national bank to "in any way solicit or receive deposits as a savings bank." Considering the third prohibition, the Trial Court in the instant case, in carefully reasoned language, held that this provision of the statute prohibits a national bank from "simulating a New York savings bank for purposes of deception" (R. 667). In other words, if a national bank should attempt to deceive the public and solicit deposits by palming itself off as a savings bank organized under the laws of the State of New York (Sections 230-260, New York Banking Law), the sanction of the New York statute obviously would apply to such a bank.

The State, by resorting to extravagant language in its complaint alleging that the Bank had practiced fraud and deception on the public, attempted to apply this portion of the New York statute to the Bank (R. 4, 86). But the attempt proved an utter failure (R. 656, 657). There was not a scintilla of evidence offered by the State that the Bank had practiced any deception, intentional or otherwise. The State unsuccessfully sought to show that the Bank had reconstructed a portion of its banking premises so as to simulate the appearance of a savings bank (R. 656). The Bank, however, as the Trial Court found, proved that the architects and builders were instructed to, and did, erect a building which resembled not a savings bank but (as a unique innovation in banking construction) a department store (R. 656). Accordingly,

on the entire record, the Trial Court emphatically dismissed any charges of fraud or deception (R. 656, 657, 667).

The findings and decision of the Trial Court on this aspect of the case were upheld in every particular by the Court of Appeals. In refusing to affirm that part of the injunction issued by the Appellate Division enjoining the Bank from "in any way soliciting or receiving deposits as a savings bank," the Court of Appeals said:

"\* \* \* However, we find in the record no evidence at all that defendant has violated, or threatens or intends to violate, the other prohibition of the above-quoted statute, which runs against 'soliciting or receiving deposits as a savings bank'. Therefore, so much of the injunction as prohibits 'soliciting or receiving deposits as a savings bank' is unwarranted and must be stricken regardless of anything else in the case." (R. 685.)<sup>5</sup>

Since the State has not challenged this action of the Court of Appeals, it cannot claim that the Bank

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<sup>5</sup> The Appellate Division issued an injunction under this part of Section 258(1) without imputing any conscious fraud or deception to the Bank and without in any way implying that it had simulated a savings bank (R. 679-682). When it reversed the Trial Court, the Appellate Division apparently issued the injunction in the terms of the State statute without considering that the evidence completely failed to support the application of this portion of the statute to the Bank.

practiced any fraud or deception by attempting to simulate a savings bank and no issue remains in this case stemming from the portion of the language of the statute which forbids such acts. Accordingly, no claim can be made herein by the State that the Bank acted otherwise than in complete good faith in asserting what its officers believed, consistent with the advice of counsel, were its rights under the laws of the United States.

The Bank's activities concededly conflicted with the first two parts of the statute which prohibit every use of the words "saving" or "savings" in (1) its banking or financial business and (2) any advertisement. In advancing its reasons why these portions of the law are valid as applied to a national bank, the State argued below at great length that the New York legislature had determined that any use of the forbidden words by a national bank would inevitably "deceive" and "mislead" the public into believing that such a bank, although chartered under the laws of the United States and bearing clear indicia of its national creation in its name, was a savings bank created under the laws of the State of New York. The State claimed that all questions of good faith on the part of the Bank or of the absence of any intention to deceive were entirely irrelevant.

The Court of Appeals agreed with the State's version of the legislative intent since it upheld the application of the statute to the Bank without any finding and without any evidence that the Bank had acted other-

wise than in good faith or with any intent to deceive the public. The Court of Appeals, therefore, treated the State's statute as tantamount to a legislative finding that any use by a national bank of the word "savings," despite the fact that Congress specifically authorized national banks to receive savings deposits, was *per se* a deceptive practice which the State could enjoin. In other words, the Court holds, consistent with the argument of the State, that the statute erects an irrebuttable presumption that, notwithstanding the *bona fides* of a national bank and notwithstanding the ability or lack of ability of the citizens of the State of New York to comprehend the distinction between a national bank and a State savings bank, any use of the forbidden words by the federal instrumentality is deceptive and misleading. It is only in this context and with this meaning that the terms have been used by the Court of Appeals and not in the sense that there was any actual misleading of the public or any wrongdoing on the part of the Bank. We shall consider below this claimed basis for the application of the challenged New York statute to this national bank. As we there develop (pp. 64-73, *infra*), the New York statute does not serve its asserted purpose, but actually serves as a competitive weapon employed to great advantage by State-created mutual savings banks and by savings and loan associations in their competition with national banks in the State of New York.

## L

**SECTION 258(1) OF THE NEW YORK BANKING LAW IS IN DIRECT CONFLICT WITH SECTION 24 OF THE FEDERAL RESERVE ACT AND SECTION 24 (SEVENTH) OF THE NATIONAL BANK ACT WHICH AUTHORIZE NATIONAL BANKS TO RECEIVE SAVINGS DEPOSITS AND, AS A NECESSARY INCIDENT TO THAT POWER, TO ADVERTISE AND CONDUCT ITS BUSINESS AFFAIRS IN SUCH A WAY AS TO ADVISE THE GENERAL PUBLIC THAT THEY ARE AUTHORIZED TO ACCEPT SAVINGS DEPOSITS.**

**A. The Federal Statutes Clearly Grant National Banks the Right to Accept Savings Deposits and to Advertise.**

The Court of Appeals of the State of New York found that Section 258(1) of the New York Banking Law did not conflict with Section 24 of the Federal Reserve Act (read in conjunction with Section 24(Seventh) of the National Bank Act) "despite a superficial, or seeming, contradiction between the phrasing of the two enactments" (R. 687). In pertinent part, Section 24 of the Federal Reserve Act reads as follows:

"\* \* \* Any such association may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such association may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such association is located." (38 Stat. 273, 44 Stat. 1232, as amended, 12 U.S.C. § 371.)

And Section 24 (Seventh) of the National Bank Act provides:

“To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; \* \* \* by receiving deposits; \* \* \*.” (R.S. § 5136, 12 U.S.C. § 24 (Seventh).)<sup>6</sup>

It is submitted that the conflict between the State law and the paramount federal law is, in the words of Judge Fuld, who dissented in the Court below, “patent and irreconcilable” (R. 690). Judge Fuld convincingly pointed out that the right of a national bank to accept savings deposits becomes meaningless if the State can compel a bank to conceal that fact. As Judge Fuld so pungently stated: “Indeed, to tell a bank that it can receive ‘savings deposits’ and yet must not publicize the fact is very much like telling a property owner that he may produce vegetables but must not water or cultivate them” (R. 690).

The right of a national bank to receive savings deposits is explicitly and unequivocally granted (44 Stat. 1232, 12 U.S.C. § 371). Can it be denied that national banks lack the power to advertise that fact?

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<sup>6</sup> The Court also found no conflict with former Sections 583-588 of Title 12 United States Code, now 18 U.S.C. 709, covering certain phases of advertising by national banks and other banking institutions. See footnote 8, *infra*, p. 37.

Can it be assumed that a national bank cannot invite the public to deal with it by quoting the very language of the Federal Reserve Act? These powers are clearly incidental powers that are, within the meaning of Section 24 (Seventh) of the National Bank Act, necessary to carry into effect those specifically granted by Congress—including, as one of the explicit powers set forth in that section, the receiving of deposits. And, of course, deposits as so used in Section 24 (Seventh) of the National Bank Act must include savings as well as demand deposits. Cf. *Kimen v. Atlas Exchange National Bank of Chicago*, 92 F. 2d 615, *certiorari denied*, 303 U.S. 650. A national bank possesses such powers as are requisite for the efficient attainment of the purposes for which it was created. *Clement National Bank v. Vermont*, 231 U.S. 120, 140; *First National Bank v. National Exchange Bank*, 92 U.S. 122, 127; *Bank of California v. Portland*, 157 Ore. 203, 69 P. 2d 273, *certiorari denied* 302 U.S. 765.

Since national banks are expressly authorized by Congress to receive and pay interest on "savings deposits," Congress must have intended that the public be informed of this authorized banking function if such business is to be obtained. The appropriate means, naturally, is advertising, and the most appropriate manner of advertising is to employ the words of ordinary meaning which Congress itself had used.

In granting the power to receive savings deposits, Congress used the word "savings" not once, but several times (see Appendix pp. 99-101). Moreover, the

inclusion of the word in 1927 was deliberate. Prior to that time, Section 24 of the Federal Reserve Act had merely provided for the receipt of "time deposits." Since "time deposits" had been defined in Section 19 of the original Federal Reserve Act (38 Stat. 270) to include "savings accounts," the express inclusion by Congress of the authority to continue to receive "savings" deposits was clearly designed to give particular emphasis to this power and to eliminate any possible doubt, if any did exist, that a national bank could receive such deposits.<sup>7</sup>

It is significant that the grant of power to receive savings deposits is general and may be exercised without reference to the laws of the several States. Thus, the maximum amount which may be received from any savings depositor, whether such a depositor may be a firm or a corporation as well as an individual, and the manner of withdrawal are in no way dependent upon the law of any State. And, most significantly, the manner of soliciting or designating such deposits is not made dependent in any way on the laws of any State. If Congress had intended that national banks should be regulated and controlled by State law in their solicitation of savings deposits, it obviously would have so provided, just as it did by the provision in the very same statute relating to the payment of interest on

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<sup>7</sup> See opinion of the Comptroller of the Currency dated July 10, 1939, set forth in Appellant's Statement as to Jurisdiction filed herein, page 54, at pages 58-59. See also discussion of the legislative history, *infra*, pages 38-44.

"savings" and other deposits. It is there provided that the rate of interest payable by a national bank on such deposits "shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which the national bank is located." (44 Stat. 1232, as amended, 12 U.S.C. § 371). The failure similarly to limit the solicitation of savings deposits calls for the application of the rule of *expressio unius est exclusio alterius*.<sup>8</sup> Likewise applicable is the general assumption that Congressional acts are deemed to have general application and are not dependent upon State law unless there is plain indication to the contrary. *Jerome v. United States*, 318 U.S. 101, 104.

Moreover, it is significant that Congress amended Section 19 of the Federal Reserve Act in 1935 to authorize the Board of Governors of the Federal Reserve System to define "savings deposits" for the purpose of applying various provisions of the Act (49 Stat. 714, see Appendix, p. 101). Pursuant to this specific authority, the Board of Governors has issued its detailed Regulations D and Q defining "savings deposits," which regulations are applicable to national banks and all other member banks of the System (12 C.F.R. §§ 204.1, 217.1, see Appendix, pp. 103-104). This

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<sup>8</sup> It should be observed that in Section 583-588 of Title 12, United States Code (now 18 U.S.C. 709), the use by banks (and others) of certain terms in advertising or in any other way is expressly prohibited. But there is no prohibition of the use by national banks of the word "savings," nor is any use of the term made to turn upon the laws of the States.

delegation of authority to the Board to define "savings deposits," which it has exercised by issuing these regulations, affords added proof of the Congressional design to occupy the field and leave no room for State control over the use of the term "savings deposits." See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218.

It thus appears that Congress intended that national banks be empowered to advertise for savings deposits and to do so in the manner most appropriate and most effective—by quoting the precise language used by Congress—without the necessity of subjecting the use of the particular language to the control of the States. It follows that Section 258(1) is in conflict with the paramount federal law.

**B. The Legislative History of the Pertinent Federal Statutes as Well as the General Legislative Design to Equalize State-National Bank Competition Supports the Bank's Position.**

As we have stated, Congress in 1927 amended Section 24 of the Federal Reserve Act to authorize national banks to "continue hereafter as heretofore to receive time *and savings* deposits and to pay interest on the same" by adding the words "and savings," thereby specifically recognizing that national banks had been accepting savings deposits for some time. Indeed, in enacting the Federal Reserve Act in 1913, Congress expressly defined "time deposits" as including "savings accounts" (Section 19, Federal Reserve Act, 38 Stat. 270). The legislative history of that act reveals that the Senate Report of the Committee on Banking and Currency

stated that "national banks now, through the system of time deposits, carry on a savings-bank business" (Sen. Rep. No. 133, 63rd Cong., 1st Sess., pp. 27-28). Thus, it appears that the long history of the operations of savings departments by national banks was well known to Congress.

The extensive nature of the savings business of national banks was revealed by the Senate Report on the 1927 amendments to the Federal Reserve Act which stated that national banks then had about \$5,000,000,000 of savings deposits from 11,000,000 depositors (Sen. Rep. No. 473, 69th Cong., 1st Sess., p. 11).<sup>9</sup> In the light of this extensive and long standing practice of national banks of soliciting and receiving savings accounts, there is no justification for the Court of Appeals' reference to the 1927 amendatory legislation dealing with "savings deposits" as being "merely descriptive of a well-known type or kind of bank deposits" (R. 687). Instead, as we have stated, the

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<sup>9</sup> Congressman McFadden, discussing the 1927 amendments on the floor of the House of Representatives, used slightly increased figures, stating:

" . . . There are on deposit to-day in the national banks a total of savings deposits to an amount of \$6,000,000,000, which is about one-fourth of the entire sum held on savings deposits by all banks in the United States. There are nearly 12,000,000 individual savings depositors in national banks, constituting nearly one-third of all of the persons carrying money in savings deposits in all banks. These figures do not include commercial time deposits, but strictly savings." (67 Cong. Rec. 2830; emphasis supplied.)

legislation embodied Congress' deliberate intention to authorize national banks specifically to operate a savings business by receiving savings deposits, paying interest thereon and making real estate loans up to the specified maximum percentage of such deposits.

In view of the obvious importance to national banks of their savings business, it is not open to doubt that, when Congress in 1927 expressly authorized those banks to continue as they had theretofore to receive savings deposits, Congress intended, as a necessary incident to this express authorization, to empower national banks to continue as they had theretofore to advertise for "savings deposits."<sup>10</sup>

It can hardly be denied that national banks were extensively advertising for savings accounts during the period when the 1927 amendments to the Federal Reserve Act were being considered. A quick search of the issues of *The Washington Post* for the period December 1, 1926, through February 28, 1927 (the 1927 amendments were approved on February 25, 1927), reveals that no less than thirty-six advertisements were published in that newspaper by not less than five national banks in Washington, D. C., during that period

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<sup>10</sup> An early example of advertising by a national bank for savings deposits appears in an opinion of this Court in 1913 which quoted the following advertisement published by the Clement National Bank of Rutland, Vermont: "We pay 4 per cent. on *savings accounts* . . . ." *Clement National Bank v. Vermont*, 231 U.S. 120, 139. This Court observed that the practice of national banks in maintaining savings departments had become extensive and had not been challenged by the Government (*ibid.*).

in which solicitation for savings deposits was made and the word "savings" specifically employed.<sup>11</sup>

Another phase of the legislative history of the 1927 amendments to Section 24 of the Federal Reserve Act is significant in revealing the Congressional intent that national banks be empowered to receive savings deposits and to make real estate loans in full and open competition with all types of banks. These amendments increased the time limitation for loans on real estate other than farm lands from one year to five years and increased the amount national banks could lend on this type of security from twenty-five per centum of capital and surplus or one-third of time deposits to twenty-five per centum of unimpaired capital and twenty-five per centum of unimpaired surplus or one-half of its savings deposits. (39 Stat. 754, 44 Stat. 1232.) The purpose of these amendments enlarging the authority of national banks to invest in real estate mortgages, as appears from the Senate Report, was to per-

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<sup>11</sup> A few examples of these advertisements are as follows (all citations are to the indicated issues of *The Washington Post*): "3% paid on savings accounts • • • Whether you maintain a Checking account, a Payday Savings account, or both, your patronage will be appreciated." National Metropolitan Bank, February 15, 1927, p. 15; "The Federal-American Has a Big Savings Department." Federal-American National Bank, February 22, 1927, p. 11; "Our Savings Dept. invites initial deposits of One Dollar or more." National Metropolitan Bank, January 30, 1927, p. 28; "Join Our 1927 Christmas Savings Club Now." Second National Bank, December 16, 1926, p. 15; "We pay more interest on savings accounts • • • come in and let us explain." Commercial National Bank, February 13, 1927, p. 27.

mit such banks to compete more effectively with State banks which received savings deposits. The Report stated:

"The State banks and trust companies are authorized to make long-time loans upon the security of first mortgage upon city real estate. National banks, by being limited to a one-year period, have found themselves handicapped in meeting the demands of their customers in this respect. This section limits all such loans to an amount not exceeding one-half of the savings deposits in the bank and thereby relates the real estate loan business to savings deposits. This is a logical connection. National banks have on deposit about \$5,000,000,000 of savings deposits from about 11,000,000 depositors. This constitutes a large proportion of the entire savings business in the United States and it has become necessary to recognize the right of a national bank with certain definite restrictions to use these funds in the same general manner in which the State banks and trust companies are using them, which includes the right to make loans upon city property, as provided above." (Sen. Rep. No. 473, 69th Cong., 1st Sess., p. 11.)

Perhaps the most pointed expression of the underlying Congressional purpose of the 1927 amendments to place national banks on a competitive plane of equality with other banks was that of Congressman

McFadden, sponsor of the bill. After passage of the Act, he said:

"As a result of the passage of this act, the national bank act has been so amended that national banks are able to meet the needs of modern industry and commerce and competitive equality has been established among all member banks of the Federal reserve system.

\* \* \* \* \*

"First, section 16 amends section 24 of the Federal reserve act *and authorizes a national bank by statutory enactment to carry on a savings bank business* and lend money on the security of real estate." (68 Cong. Rec. 5815, 5818; emphasis supplied.)<sup>12</sup>

Congress, as we develop later, has adhered faithfully since the National Bank Act was adopted in 1864 to a well defined purpose to equalize competition between national banks and State banks and other banking institutions.<sup>13</sup> Congress adhered consistently to this

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<sup>12</sup> For other Congressional statements during debates on the 1927 amendments showing the intent of Congress to place national banks on an equal competitive plane with all State banks and banking institutions, see 67 Cong. Rec. 2839, 3246-3247; 68 Cong. Rec. 2171, 2173, 5815.

<sup>13</sup> We discuss *infra*, pages 82-85, the numerous statutes which Congress has enacted to insure that national banks shall enjoy an equal competitive position with State competitors. We also there discuss this Court's recognition in a number of decisions of this Congressional design.

legislative design in 1927 by seeking, through the amendments discussed above, and others,<sup>14</sup> to improve the competitive position of national banks in areas where those banks had previously operated at a disadvantage *vis-a-vis* the State banks. Accordingly, when Congress included the right to receive savings deposits at the very same time that it was broadening the powers of national banks and strengthening their ability to compete on equal terms with State banks, it cannot be assumed that Congress intended to restrict the use of the word "savings" by national banks or to subordinate their use of that term in any aspect of their banking business or their dealings with the public to the control of the States.

**C. The Administrative Construction of the Federal Laws by the Agencies Charged With Their Administration, a Construction Approved by Congress, Supports the Bank's Position.**

The deliberate inclusion by Congress in the 1927 amendments of the right of national banks to receive savings deposits is particularly significant when considered in the light of the long maintained position of the Federal Reserve Board that the States were not empowered to forbid national banks to advertise for "savings" deposits. The Board's administrative

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<sup>14</sup> To equalize the competitive position between national banks and State banks, Congress authorized national banks to operate branches in those States where State banks, defined to include trust companies, savings banks, or other such corporations or institutions carrying on a banking business, were authorized to operate branches. 44 Stat. 1228, as amended, 12 U.S.C. § 36.

position on this question was first published in 1915 (1 Fed. Res. Bull. 18). Its ruling dealt with a California statute which, like Section 258(1) of the New York Banking Law, prohibited any bank not authorized to do a saving bank business by the State from advertising for "savings" deposits.<sup>15</sup> The ruling was prompted by a notice of the Superintendent of Banks of the State of California that he would seek to impose the penalties prescribed by the California law on national banks. It will be recalled that at that time (1915), Section 24 of the Federal Reserve Act provided that national banks "may continue hereafter as heretofore to receive time deposits and to pay interest on the same," and that Section 19 of the Act defined "time deposits" to include "savings accounts \* \* \* subject to not less than thirty days notice before payment."

The Federal Reserve Board held that, since national banks possessed the power to receive "time deposits" which were defined to include certain "savings accounts," the right to advertise for such accounts would seem to be a necessary incident to the exercise of that

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<sup>15</sup> The California statute discussed in this 1915 ruling has been continued to the present time with some modification of language. Section 3394, California Banking Code, quoted in Appellant's Statement as to Jurisdiction filed herein, page 53. Minnesota has a law similar to Section 258(1), New York Banking Law. Title 47.23, Minnesota Statutes, quoted in Statement as to Jurisdiction, page 53. It should be noted that, unlike the New York law, neither the California nor the Minnesota statute specifies by its very terms that it applies to national banks.

power and that, consequently, the California statute could not be enforced against them.

The ruling stated:

"Inasmuch, therefore, as Congress has the right to authorize national banks to charge interest on accounts and to include in such accounts what are generally known as 'savings accounts,' and since it has exercised this right, it would seem that the California statute referred to cannot properly be so construed as to defeat this right.

"I cannot agree with Mr. Williams [California Superintendent of Banks] that depositors would necessarily be led to assume that savings accounts received by national banks would be subject to investment according to State laws; and while national banks should not be permitted to advertise themselves as 'savings banks,' since they are not so designated in the act, power is specifically granted to member banks to receive interest-bearing accounts, including 'savings accounts' and since they possess this power the right to advertise for such accounts would seem to be a necessary incident to its exercise.

"It is not believed, therefore, that the penalties prescribed by Section 49 of the bank act of the State of California could be legally enforced against a national bank which advertises that it will receive and pay interest on savings accounts." (1 Fed. Res. Bull. 18, 20-21.)

This ruling of the Federal Reserve Board has been in effect since 1915 and has not been modified. In 1916, after its publication, Congress, in amending Section 24 of the Federal Reserve Act, re-enacted without change the pertinent language "may continue hereafter as heretofore to receive time deposits and to pay interest on the same" (39 Stat. 754). And, in 1927, as discussed above, Congress again re-enacted this identical language, but enlarged it by inserting the words "and savings" before "deposits" (44 Stat. 1232).

In these circumstances, the well-known rule of statutory construction—that, by the re-enactment without material change of a statutory provision which has been the subject of an administrative construction, Congress must be taken to have approved that construction and to have given it the force of law—would seem to be particularly applicable here. *Helvering v. Reynolds Co.*, 306 U.S. 110, 114-115, *Helvering v. Wilshire Oil Co.*, 308 U.S. 90, 100. See *Labor Board v. Gullett Gin Co.*, 340 U.S. 361, 366.

In addition to the ruling of the Federal Reserve Board, the Comptroller of the Currency has expressly ruled on the precise issue involved in this case. On July 10, 1939, the Comptroller submitted a formal opinion to the Attorney General of New York holding, with detailed supporting reasoning, that national banks in New York were empowered to use the word "savings" notwithstanding the prohibition of its use contained in Section 258(1) of the New York Banking

Law.<sup>16</sup> This opinion emphasized the paramount nature of any federal laws granting powers, including incidental powers, to national banks over any conflicting State laws or over any such laws which impair or frustrate the discharge of the functions of national banks. The opinion referred with approval to the 1915 Federal Reserve Board ruling discussed above and stated that the Congressional re-enactment of the pertinent language of Section 24 of the Federal Reserve Act constituted Congressional approval of the Board's administrative construction.

The opinion stated in part:

"Therefore, with the right of national banks to accept savings deposits clearly established under powers expressly granted by Congress, it is believed, in conformity with the cases cited above, that any State law which interferes with a national bank in the maintenance of a department in which such deposits are accepted under the title of "Savings Department", or from freely advertising the fact that national banks have the right to accept such savings deposits, is an attempted exercise of authority which expressly conflicts with the laws of the United States and impairs the efficiency

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<sup>16</sup> A certified copy of the original opinion of the Comptroller of the Currency dated July 10, 1939, and labelled "Defendant's Exhibit 00 for Identification" is included with the original documents in this cause lodged by the New York Court with the Clerk of this Court. This opinion was reprinted in Appellant's Statement as to Jurisdiction, pages 54-60.

of agencies of the Federal Government to discharge the duties for which they were created."

After pointing out that Section 258(1) of the New York Banking Law forbids a national bank even to publish the exact language of the federal law authorizing the receipt of "savings" deposits, the opinion concluded:

"Certainly it cannot be contended either that national banks do not have the right to solicit time or savings deposits which they have the express right, under Federal law, to accept, and upon which their existence depends \* \* \* or that national banks do not have the right to publish *verbatim* sections of Federal law under which they operate.

"Therefore, \* \* \* section 258 of the Banking Laws of the State of New York, quoted herein, is of no application to national banks."

The Court of Appeals disregarded the administrative interpretation of Section 24 of the Federal Reserve Act by the Federal Reserve Board and by the Comptroller of the Currency. Yet, in a situation like the present where there is no statutory indication that these rulings are incorrect and where they have been consistently adhered to and followed for a long period of time, they are "entitled to great respect and should ordinarily control the construction of the statute by the courts." *Pennoyer v. McConnaughy*, 140 U.S. 1,

23. See particularly *Inland Waterways Corp. v. Young*, 309 U.S. 517, 524; *Berger v. Chase National Bank*, 105 F. 2d 1001, affirmed without opinion, 309 U.S. 632.

**D. The State Statute is in Direct Conflict With the Federal Statutes and Must Yield.**

Section 258(1) of the New York Banking Law expressly prohibits a national bank from using the words "saving" or "savings" (1) in its banking or financial business, or (2) in any advertisement relating to that business. The federal statutes, as we have shown, authorize the prohibited use. A conflict exists, direct and positive. In such circumstances, the supremacy clause of the Constitution, Article VI, Clause 2, requires that the state law must yield. As was stated in *Florida v. Mellon*, 273 U.S. 12, 17:

" \* \* \* Whenever the constitutional powers of the federal government and those of the state come into conflict, the latter must yield.

\* \* \* \*

"Congress cannot accommodate its legislation to the conflicting or dissimilar laws of the several states nor control the diverse conditions to be found in the various states which necessarily work unlike results \* \* \*." <sup>17</sup>

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<sup>17</sup> The fact that the conflict is between an express State statute, on the one hand, and an implied provision of a federal statute, on the other hand, is not material. The State law must yield. *Hines v. Davidowitz*, 312 U.S. 52; *First National Bank v. California*, 262 U.S. 366; *Easton v. Iowa*, 188 U.S. 220; *Davis v. Elmira Savings Bank*, 161 U.S. 275; *Farmers & Mechanics National Bank v. Dear-*

This Court has frequently been required to protect the national banking system from infringement by State laws in conflict with the pertinent federal statutes. The leading case, we believe, is *Easton v. Iowa*, 188 U.S. 220. That case is singularly apposite to the instant controversy, not only because this Court was called upon to resolve a conflict between the State and federal banking laws by upholding the supremacy of the latter, but also because the State of Iowa sought unsuccessfully to uphold its own statute on grounds strikingly similar to those relied on by the State of New York here.

In the *Easton* case the Supreme Court of the State of Iowa had affirmed the conviction of the president of a national bank for violating a State statute making the receipt by a bank of deposits while insolvent and when such insolvency was known to the defendant a criminal act. On the other hand, the National Bank Act required a national bank to continue its operations until the Comptroller of the Currency deemed it insolvent and appointed a receiver to wind up its affairs. The Comptroller had taken no action.

In upholding the application of its own statute to national banks in the *Easton* case, 113 Iowa 516, 85 N.W. 795, the Iowa Supreme Court based its decision on an earlier case in which it characterized its law

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ing, 91 U.S. 29; *Fidelity National Bank & Trust Co. v. Enright*, 264 Fed. 236; *Springfield Inst. for Savings v. Worcester F. S. & L. Ass'n*, 329 Mass. 124, 107 N. E. 2d 315, *certiorari denied*, 344 U.S. 884.

as "a police regulation having for its object the protection of the public from the fraudulent acts of bank officers." *Iowa v. Fields*, 98 Iowa 748, 751, 62 N.W. 653. (Compare the references in the opinion of the Court of Appeals in the instant case to the purpose of Section 258(1) of the New York Banking Law to prevent "fraud" and "deception.") Moreover, the Iowa Court stated:

"Surely, it was not intended by any act of Congress that officers of a national bank should be clothed with the power to cheat and defraud its patrons." (*Ibid.*)

This language found an almost exact parallel in the opinion of the Court of Appeals herein which stated:

"Congress, while interested in protecting its creatures, the national banks, in the use of their proper powers, has no interest in their use of deceptive verbiage" (R..688).

This Court rejected the grounds relied on by the Iowa Supreme Court, pointing out that the National Bank Act—

" \* \* \* has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States." (188 U.S. 220, 229)

And, after emphasizing the role of national banks in aiding the government in the public service, the opinion continued—

“Such being the nature of these national institutions, it must be obvious that their operations cannot be limited or controlled by state legislatures\* \* \*.” (*Id.* at 230)

The Iowa Court, in an effort to show that there was no direct conflict with federal law, had pointed out that no law of Congress prohibited the receipt of deposits by an insolvent bank, a contention similar to the position taken by the Court of Appeals herein that no act of Congress in terms authorizes national banks to use the word “savings” in their advertising. But this Court found that Congress had provided a symmetrical and complete scheme for national banks and had not intended to leave the field open for the various States to attempt to promote the welfare and stability of national banks by direct legislation. (*Id.* at 231.)

In reversing the conviction and holding the Iowa statute invalid as applied to national banks, this Court said:

“Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the *sole power to regulate and control the exercise of their operations; \* \* \* that it is not competent for state legislatures to interfere, whether*

*with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government."* (*Id.* at 238; emphasis supplied.)

Another case almost identical with the instant case is *Fidelity National Bank & Trust Co. v. Enright*, 264 Fed. 236. In that case the State of Missouri contended that the bank could not combine the use of the words "bank" and "trust company" in its title since a State law provided that only a State-licensed trust company could use the word "trust" in its title. The national bank, whose name had been approved by the Comptroller of the Currency, had formerly been a State-licensed trust company. The State Bank Commissioner argued that it could use one title or the other but not both. He also claimed that it was illegal for the national bank to *advertise in any manner to the public* that it was engaged in the exercise of trust powers vested in it pursuant to an act of Congress. The District Court heard the case upon an action to enjoin the State from refusing to approve the national bank as a depository for the funds of State banks and trust companies, and, in granting the injunction, said:

" \* \* It surely cannot be contended that if valid authority is granted to a national banking corporation to exercise certain functions, *under a name which no state agency is entitled to question*, the enjoyment of the legitimate powers thus conferred can be indirectly limited or destroyed in the man-

ner alleged in this bill. That such would be the necessary effect of the action of the bank commissioner cannot be doubted." (*Fidelity National Bank & Trust Co. v. Enright*, *supra*, 239-240; emphasis supplied.)

This case has been cited with approval by this Court on a related issue. *Burnes National Bank v. Duncan*, 265 U.S. 17, 24-25.

In *First National Bank v. California*, 262 U.S. 366, a State law relating to dormant accounts in national banks was held invalid, although there was no express federal statute on the subject. The pertinency of the following language of this Court's opinion to the case at bar is obvious:

"Plainly, no state may prohibit national banks from accepting deposits or directly impair their efficiency in that regard.

\* \* \* \* \*

"\* \* \* If California may thus interfere other states may do likewise \* \* \*. We cannot conclude that Congress intended to permit such results. They seem incompatible with the purpose to establish a system of governmental agencies specifically empowered and expected freely to accept deposits from customers irrespective of domicile \* \* \*." (*Id.* at 369-370)

This Court, in sustaining the application of an escheat statute of Kentucky to deposits in national banks,

carefully distinguished the case of *First National Bank v. California*, *supra*, in language consistent with that quoted from that decision in the text. *Anderson National Bank v. Lockett*, 321 U.S. 233, 249-252.

Before the Court of Appeals, the State relied upon the well-known decisions in the field of inter-governmental tax immunity and drew comfort from the fact that the principle that neither the State nor the Federal Government can tax the "instrumentalities" of the other—a principle which at one time had been vigorously adhered to—has been liberalized in recent years. See, *e.g.*, *James v. Dravo Contracting Co.*, 302 U.S. 134; *Oklahoma Tax Commission v. Texas Co.*, 336 U.S. 342; *Graves v. New York ex. rel. O'Keefe*, 306 U.S. 466; *Helvering v. Gerhardt*, 304 U.S. 405.

In all these cases, the immunity from the tax in question was claimed by a private person merely on the basis that he bore some contractual relationship to the Government, *i.e.*, employee, lessee or contractor. There is, of course, no reasonable basis to question a retreat from the strict application of a concept of tax immunity, derived solely from the implications of the Constitution, to the present position of this Court that such private persons, to whom Congress has not seen fit to grant tax immunity, should not escape general and nondiscriminatory tax burdens borne by other citizens. (See *Oklahoma Tax Commission v. Texas Co.*, *supra*, decided by a unanimous court in 1949.) The very statement of these underlying reasons for the present position of this Court on this issue shows, however, how

inapposite this line of cases is to any issue at bar. The status of a national bank, chartered by the United States and strictly controlled and regulated by it, bears no relationship to the status of a private person who happens to have a contract with the United States Government. See *Alabama v. King & Boozer*, 314 U.S. 1.<sup>18</sup> Moreover, as we have shown, Congress in the instant situation has authorized national banks to take a course of action which directly conflicts with the sanctions imposed by the New York law.

The State's reliance below on *Penn Dairies v. Milk Control Commission*, 318 U.S. 261, is likewise misplaced. This case is closely akin to the tax cases discussed above. It simply holds that a valid State minimum milk price regulation does not become invalid when it is applied to a private milk dealer who held a contract to sell his products to the United States Government. There was no interference with the Government and no burden placed upon it, except in so far as State regulation might increase the price to all purchasers, including the Government. And this, in the absence of any immunity granted by Congress, was permissible. *Id.* at 269-270. There is, of course, no reasonable basis for identifying the milk dealer in that case with the national bank involved here; furthermore,

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<sup>18</sup> Even now, it is clear that, without Congressional consent, the States cannot tax the Federal Government or its agencies, while the Federal Government is empowered to tax certain activities of the States. Compare *Mayo v. United States*, 319 U.S. 441 (discussed *infra*, pages 59-60) with *New York v. United States*, 326 U.S. 572.

Congress has not remained silent but has acted in a manner which leaves no room for the operation of the State law.

It is thus apparent that Section 258(1) of the New York Banking Law, in so far as it prohibits national banks from using the words "saving" or "savings," is in direct conflict with the paramount federal law. The State law must accordingly yield.<sup>19</sup>

**E. The State Is Not Empowered to Impose its Own Banking Standards on National Banks. Moreover, the Use of the Word "Savings" by National Banks Is Not Deceptive or Misleading.**

The State contends that the rationale of the cases cited above does not apply to its law because, as the Court of Appeals held, "Congress, while interested in protecting its creatures, the national banks, in the use of their proper powers, has no interest in their use of deceptive verbiage" (R. 688). The validity of this statement hinges, of course, on the meaning of the term "deceptive verbiage." The Court of Appeals could not have meant active or intentional deception of the public since, as shown *supra*, pages 27-32, there was no evidence of such conduct on the part of the Bank and the Court of Appeals, in complete agreement with the Trial Court, had absolved it of the charges of this

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<sup>19</sup> The well recognized banking authority, Paton's Digest of Legal Opinions, agrees with this conclusion. It is there stated:

"It seems to be beyond dispute that (1) national banks can receive savings deposits and (2) can advertise this service."  
(I Paton's Digest, 1940 edition, 645; see also *id.* at 553.)

nature brought by the Attorney General. Accordingly, the Court of Appeals uses "deceptive" (and words of like meaning) in the sense that the prohibited words are *ipso facto* misleading. See *supra*, pages 31-32. But it is clear that, while Congress did not intend to authorize national banks to engage in false and misleading advertising of any nature, it likewise did not intend to subject national banks' advertising to scrutiny by the State Bank Commissioners of forty-eight states, each acting under its own State laws which might or might not define some banking term as misleading. Furthermore, no claim can or has been made that, apart from the gloss the State claims the word has received in New York, the use of the word "savings" by national banks is inherently deceptive. It is an appropriate word of ordinary meaning which accurately and meaningfully defines an authorized function of national banks—that of receiving "savings deposits."

The case of *Mayo v. United States*, 319 U.S. 441, is particularly pertinent. This case involved an attempt by the State of Florida to tax and regulate the distribution of fertilizer in that State by the United States pursuant to the Soil Conservation and Domestic Allotment Act. The State argued that the United States was not exempt by Constitution or statute from compliance with reasonable state regulation or the payment of reasonable inspection fees and that regulation and inspection were necessary to protect the farmers against the fraudulent imposition of fertilizers of inferior quality

(319 U.S. 441, 444, 445). This Court considered this contention, saying:

“\* \* \* Admittedly the state inspection service is *to protect consumers from fraud* but in carrying out such protection, the federal function must be left free. This freedom is inherent in sovereignty. The silence of Congress as to the subjection of its instrumentalities, other than the United States, to local taxation or regulation is to be interpreted in the setting of the applicable legislation and the particular exaction.” (*Id.* at 447-448; emphasis supplied.)

This reasoning applies with particular force to the instant case. Here, of course, as developed above, Congress has not remained silent. Furthermore, national banks are subject to comprehensive regulation, examination and control by the Comptroller of the Currency. If national banks are also subject to inconsistent state regulation, even regulations designed to protect its citizens against fraud and deception, chaos in the administration of the banking laws would be the inevitable result. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218. It cannot be assumed that the Comptroller of the Currency would permit national banks under his supervision to engage in deceptive practices. In this case, moreover, he has ruled affirmatively that a course of conduct identical with that carried on by the Bank is authorized under national banking laws, *supra*, pages 47-49, a ruling

which reflects his opinion that the use by the Bank of the word "savings" is not deceptive.<sup>20</sup>

In the light of the carefully prescribed administration of the national banking system which Congress has lodged in the Comptroller of the Currency, it is not competent for the State to interfere, "whether with hostile or friendly intentions." *Easton v. Iowa*, 188 U.S. 220, 238. Accordingly, it is not permitted to the State of New York to impose on national banks its own standards of banking or its own concepts of the proper or appropriate means by which national banks can attract the public to their doors. The Court of Appeals, however, erroneously concluded that, since the New York State Legislature in enacting the challenged legislation had determined that the use of the prohibited words was deceptive and misleading, Congress could not have intended that national banks should use them in carrying on their banking operations. The Court thus made the determination of Congressional intent a matter turning upon the motives of the State Legislature. In so doing, the Court of Appeals closely followed the reasoning of the Supreme Court of Iowa which this Court expressly rejected in *Easton v. Iowa*, *supra*, at 229. See *First National Bank v. Fellows*, 244 U.S. 416.

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<sup>20</sup> The 1939 opinion of the Comptroller of the Currency refers to various opinions of the Attorney General of the State of New York and finds them in error. Appellant's Statement as to Jurisdiction, page 54 at pages 55-56. These opinions of the Attorney General, in holding the New York law applicable to national banks, had emphasized the purpose of the State law to prevent deception.

Since the motives of the State Legislature are not material to the determination of the instant case, the Bank, of course, rests its position on the supremacy clause of the Constitution, Article VI, Clause 2, as applied in many decisions of this Court to protect national banks from legislative interference by the States. In other words, the Bank's position is unsailable even assuming, *arguendo*, that full weight is given to the contentions of the State that the purpose served by the challenged New York law is the prevention of deception and misleading advertising. Although the Bank could stop at this point, it seems most appropriate, in view of the allegations of fraud and deception (although they are conceded not to have been intentional acts) which permeate the State's case, to examine the soundness of its basic premise that the law does serve the avowed purposes.

In so doing, the Bank is not attempting in any way to derogate from the proper functions to be served by the Court of Appeals, the court of last resort of the State of New York, in cases such as this in which a State law is challenged before this Court. The Bank, while attacking the validity of Section 258(1) of the New York Banking Law as applied to national banks, does not challenge the *construction* of the language of that law by the New York Court of Appeals. In fact, there is no controversy over the proper interpretation of the language of that Section. In terms which are clear and unequivocal, the New York Legislature has prohibited the use of the term "savings" by other than

the favored banks specified, and in like definite terms has included national banks within the prohibition of the statute, as the Court of Appeals held. Nor does the Bank challenge the right of the State of New York to apply to the banking instrumentalities of its own creation the standards of advertising that find their legislative expression in Section 258(1). See *Davis v. Elmira Savings Bank*, 161 U.S. 275. However, when the State of New York attempts to apply the State-created standards to national banks, a national bank, like the Appellant here, is entitled to address considerations to this Court which show that the purposes claimed for the statute are not served, but quite other and detrimental consequences follow the application of the statute.

In *Easton v. Iowa*, *supra*, this Court invalidated the Iowa law as applied to national banks on the basis of the supremacy doctrine, but the Court was not content to let the matter rest there in view of the serious accusation of fraudulent conduct denounced by the State statute of which Easton, president of a national bank, had been found guilty. This Court convincingly demonstrated that the particular conduct made a criminal act by the Iowa law (receiving deposits with knowledge of the bank's insolvency) was not fraudulent under the carefully planned system for the handling of distressed banks established by the National Bank Act but, on the contrary, that a strict application of the Iowa standards to the national banks might be ruinous to the bank's depositors. *Id.* at 232. Similarly, in this case an examination of the New York

statute shows, when applied to national banks, that it fails to meet the objectives claimed of it by the State.

The New York law has a long history, going back to 1858, but its present drastic form dates back only to 1905, about eighty-five years after mutual savings banks were first organized in New York.<sup>21</sup> The New York Legislature, in first enacting the law as Chapter 132 of the Laws of 1858, made it unlawful for any bank, etc., "established in any city or village where a chartered savings bank is located and transacting business, to advertise or put forth a sign as a savings bank, \* \* \*." By 1875 the law had been amended to prohibit any bank, etc. "to advertise or put forth a sign as a savings bank, or in any way to solicit or receive deposits as a savings bank; \* \* \*." L. 1875, Ch. 371, Sec. 49. It is pertinent to observe that this language was designed to prevent only the simulation of a savings bank, a charge upon which the Bank here was expressly cleared (*supra*, pp. 29-30).<sup>22</sup>

<sup>21</sup> Francis J. Ludemann, Deputy Superintendent of Banks, testified that the history of savings banks began in 1819 (R. 284).

<sup>22</sup> The New York law was in the form last quoted in the text (an amendment by L. 1882, Ch. 409, Sec. 283 not having changed this language) when the Court of Appeals decided *People v. Binghampton Trust Co.*, 139 N. Y. 185, 34 N. E. 898, in 1893. The case held that a trust company had not violated the Act since it had not simulated a savings bank. In so holding, the opinion of the Court of Appeals contained this interesting observation:

"Can there be such a thing as an exclusive appropriation of a system of conducting commercial transactions, and thereby to symbolize it to the world? I do not think that savings banks, however closely in the public interest they should be guarded, should be accorded a monopoly of any set of business rules." (*Id.* at 190.)

It was not until 1905 (after two immaterial amendments in 1892 and 1904) that the Act was substantially amended to prohibit any use of the word "savings" in the banking business and to extend the protection of the statute to a "building and loan association organized under the laws of the state of New York." L. 1905, Ch. 564. That banks other than mutual savings banks could use the term "savings" prior to 1905 clearly appears from the language of the Appellate Division in this case:

"For almost half a century the only banks permitted to use the word 'savings' in the State of New York have been mutual savings banks (Laws of 1905, Chap. 564)" (R. 679).

Thus, it is interesting to note that, during the 19th century when the banking system of the nation was gradually being evolved and when unsound banking practices were rife and economic recessions and bank failures followed a common cyclical pattern, the State of New York did not find it necessary to protect depositors in mutual savings banks from any except the active fraudulent act of simulating a savings bank. It was not until the early years of this century that New York enacted a flat prohibition against the use of the word "savings" in the business of any bank other than New York mutual savings banks and building (later savings) and loan associations.

In 1914 the law was substantially amended to include national banks within its prohibition, as follows:

"No bank, *national banking association*, trust company, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word 'saving' or 'savings' or its *equivalent*, in its banking business, or advertise or put forth any advertising literature or sign containing the word 'saving' or 'savings,' or its equivalent, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank." (L. 1914, Ch. 369, Sec. 279; emphasis supplied.)

It is to be noted that by the 1914 amendments the law prohibited the use not only of the word "saving" or "savings" but also its "equivalent," and the protection of the law was extended to savings and loan associations without reference to the law under which they were organized. Hence, federal savings and loan associations are included within the protection of the New York law thereby creating the anomalous situation of a State law discriminating between two different classes of federal financial instrumentalities—national banks and federal savings and loan associations.

The only significant amendments to the New York law since 1914 have been those enacted in order to bring other types of financial institutions within the protection of the law. In 1932 the use of the word "savings" was permitted in the name of the "Savings and Loan Bank of the State of New York" and in 1934 the statute was further amended to permit the use of the

word "savings" in the name of a trust company all the stock of which is owned by not less than twenty savings banks.<sup>23</sup> (L. 1932, Ch. 604; L. 1934, Ch. 255.)

In 1941 the New York law, which had previously been re-numbered as Section 258 of The Banking Law (L. 1938, Ch. 352, Sec. 258), was amended to extend the prohibition of the use of the word "saving" or "savings" not only to the "banking" but also to the "financial" business of the banks to which the prohibition applied. (L. 1941, Ch. 585.) As so amended, it has remained unchanged to date.

It thus appears that the exclusive purpose of this New York statute, until it was amended in 1905, as discussed above, was to prohibit any institution or person, except the specified banks, from simulating, or holding out to be, a savings bank. See *People v. Binghamton Trust Co.*, 139 N.Y. 185, 34 N.E. 898. And even after 1905 this remained a principal purpose of the law.<sup>24</sup> Yet the Court of Appeals completely exonerated the Bank from the charge that it had simulated a savings bank by "soliciting or receiving deposits as a savings bank" (R. 685). It is therefore difficult to understand how the Bank could possibly have deceived any member of the public into

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<sup>23</sup> There is one such institution in New York—The Savings Banks Trust Co. See McNally's Bankers Directory, 1953 ed., page 1091.

<sup>24</sup> This is confirmed by a 1907 opinion of the Attorney General of New York that national banks had no right to hold themselves out as savings banks or to advertise as such. 1907 Opinions of the Attorney General of New York, p. 473.

believing that it was a New York mutual savings bank when it neither solicited nor received deposits as a savings bank.

The Court of Appeals said nothing to explain away the dilemma in which the State finds itself; it did not explain how advertising for "savings" could be deceptive when there was no attempt by the Bank to advertise as a savings bank. Furthermore, the Court of Appeals did not indicate how the word "savings" could be inherently deceptive.<sup>25</sup> If we turn, however, to the opinion of the Appellate Division, we find the statement that over the course of time the prohibited word "savings" had become "so associated with the idea of 'savings bank' that if used by another kind of bank, some people were apt to be misled into thinking it to be a mutual savings bank" (R. 680). No basis in fact was advanced for this observation, and the record is barren of testimony which would support it.<sup>26</sup> Indeed, it is strange that only New York has found the

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<sup>25</sup> It is also difficult to follow the reasoning of the Court of Appeals when it refers to the Congressional authorization of national banks to receive "savings deposits" as being merely "descriptive of a well-known type or kind of bank deposits" (R. 687) and yet, in the same opinion, refers to the use of the same expression by national banks as being "deceptive" and "misleading." If Congress described a well-known kind of deposits as "savings deposits," how, it may be asked, can that very description be deceptive and misleading? See dissenting opinion of Fuld, J. (R. 691).

<sup>26</sup> The State's witness, Arthur R. Seaton, State Bank Examiner, testified that he could not name one person in the entire State of New York who had been fooled or deceived by the Bank's use of the word "savings" (R. 69).

use of the word "savings" by national banks to be deceptive. Of the 17 States which have mutual savings banks, only New York, we understand, has in terms prohibited national banks from using the word "savings" or has attempted to apply any statutory control of the use of the word to national banks.

The New York law contains in its very language contradictions and inconsistencies which are not consonant with its avowed purpose to prevent the public from being "fooled" into believing that any use of the word "savings" must refer only to a mutual savings bank. The statute does not extend its protection solely to mutual savings banks, but since 1905 has protected other financial institutions competing with national banks. As presently in force, the New York statute permits the use of the word "savings" not only by mutual savings banks but also (a) by savings and loan associations, both federal and state, (b) in the title of the Savings and Loan Bank of New York and (c) in the title of any trust company the stock of which is owned by more than twenty savings banks.<sup>27</sup>

Surely the identification of the word "savings" with mutual savings banks is completely lost if the word can be used by such diverse kinds of organizations as those now protected by the statute. The dilemma in which the State finds itself in trying to maintain the exclusive identifications of the term "savings" with mutual savings banks is demonstrated by the fact that there are only 130 such banks in New York while there are

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<sup>27</sup> See footnote 23, *supra*, p. 67.

at least 185 savings and loan associations located in New York.<sup>28</sup>

The effort of the State to identify the word "savings" with a particular type of institution must fail in respect to national banking associations authorized by the United States Government since Congress has clearly shown that, in relation to such banks, "savings" means a particular kind of an account, not an institution. Thus, when Congress in 1927 authorized national banks to receive and pay interest on savings deposits, it was obviously referring to a type of account or deposit. The same connotation obviously applies to the other references to "savings" in Section 24 of the Federal Reserve Act. Of particular significance is the authority which Congress has granted the Board of Governors of the Federal Reserve System to define "savings deposits" (38 Stat. 270, as amended, 12 U.S.C. § 461), and which the Board has exercised by the issuance of regulations. See *supra*, pp. 37-38. The definitions of "savings deposits" contained in these regulations, which apply to all other national banks, do not, of course, connote an institution but refer only to a type of deposit. It is only as thus defined and with such a meaning that the Bank has used the word "savings." Hence, the meaning which the State attempts to impute through legislative action to the word "savings" conflicts directly with the statutes

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<sup>28</sup> Annual Report of the Federal Deposit Insurance Corporation, 1952, p. 52; 6th Annual Report House and Home Finance Agency, 1952, p. 199.

nacted by Congress and the regulations adopted thereunder.

It is curious that a law which assertedly is designed to prevent deception has forced the use of language which, if not actually misleading, prevents the public from obtaining a clear understanding of a particular function being performed by national banks in New York. It will be recalled that since 1914 the New York statute has prohibited not only the use of the word "saving" or "savings" but also their equivalent" (*supra*, p. 66). The practice has developed in New York, under the threat of this statute, of commercial banks calling their savings accounts "special interest accounts," "thrift accounts" and "compound interest accounts." All these terms, of course, are somewhat labored equivalents of the term "savings accounts."<sup>29</sup> The Court of Appeals in the instant case found these expressions are "synonymous" with "savings accounts" (R. 689). Yet the Court apparently failed to realize that if they are synonymous, they are necessarily equivalent to "savings accounts" and hence

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<sup>29</sup> August B. Weller, President of the Meadowbrook National Bank, gave the following significant testimony:

"The words thrift, special interest, or compound interest, are absolutely futile in appealing to the public to indicate what the word savings [means], \* \* \* and not only do not produce results, but they are in my opinion entirely misleading. I do not think they convey to the public, or even to those of us who work in banks, the sense of what they really mean. We are trying to indicate the meaning of the word, savings in a savings account, by using other terms which do not at all indicate what the account is." (R. 140.)

should come under the ban of the statute.<sup>30</sup> It hardly can be said that the statute prevents deception if its necessary effect is to force banks to label "savings accounts" with words of equivalent meaning but prevents the use of the word of common understanding that readily and accurately identifies the account in the public's mind. That the public is being misled by this circumlocution forced upon national banks in New York is revealed by the Hofstra Survey which shows that only a small percentage of the public knows the meaning of these substitute expressions while "savings" is well understood. See *infra*, pages 92-93.

There is another consideration which shows that the use of the word "savings" by national banks cannot be inherently deceptive. The Bank's advertisements for savings accounts or other use of the word "savings" of course, is under, or in conjunction with, its name—Franklin National Bank of Franklin Square. "National" has been an integral part of the corporate name of national banks for almost a century—since the National Bank Act was enacted in 1864. It can only be used in the name of national banks created by the United States Government (17 Stat. 603, re-enacted 62 Stat. 862, 18 U.S.C. 709). Accordingly, it cannot be assumed without proof that national banks and State mutual savings banks cannot be separated in the minds of the public in New York. The State offered

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<sup>30</sup> Apparently the Attorney General has tolerated this apparent violation of the law although he has issued no opinion that the use of these substitute terms forced upon all except the privileged banks is consonant with the statute.

no proof and cannot possibly adduce any that there was any possibility that when a person entered the doors of the Franklin National Bank, filled out one of its "savings" deposit slips (Pl. Ex. 13A, R. 35, 578A) and made deposits at the "savings" counter (Pl. Ex. 21, R. 42, 588), he was under the delusion that he was depositing his savings in a mutual savings bank organized under the laws of the State of New York.

It clearly appears that the use by national banks of the word "savings" does not refer to or connote mutual savings banks and that such use is not deceptive nor calculated to fool the public. Furthermore, the conclusion is inescapable that the meaning sought to be imputed to the word "savings" by the State of New York is directly contrary to the meaning imputed to the term by Congressional enactments and administrative regulations adopted under Congressional authority. The meaning attributed to the term by Congress must, of course, prevail.

## II.

### **SECTION 258(1) DISCRIMINATES AGAINST NATIONAL BANKS IN FAVOR OF STATE INSTITUTIONS AND HAMPERS AND IMPAIRS THE EFFICIENCY OF NATIONAL BANKS.**

#### **A. National Banks Are the Necessary Instruments of Effectuating the Nation's Monetary Policy.**

The Federal Reserve System, as established by Congress in the original Federal Reserve Act of 1913 and its amendatory acts, has as its principal purpose the formation of the national monetary policy within the directives of that legislation and under the powers con-

ferred thereby. The Board of Governors of the Federal Reserve System in describing this function of the System has said:

“The principal purpose of the Federal Reserve is to regulate the supply, availability, and cost of money with a view to contributing to the maintenance of a high level of employment, stable values, and a rising standard of living.”<sup>31</sup>

One of the chief means chosen by Congress in the Federal Reserve legislation to carry out the nation's monetary policy was a reserve system of banking under which the nation's supply of money is principally controlled by a central agency (the Board of Governors of the Federal Reserve System) having power to specify the reserve requirements of *member banks*. Obviously, a material condition to the success of such a system is a sufficient number of member banks having sufficient deposits to make compliance with the Board's reserve requirements a controlling factor in determining the country's money supply. To insure this, Congress has required that its creatures, the national banks, be members of the Federal Reserve System and that other State banks and trust companies could become members upon meeting certain standards and complying with certain conditions. These other mem-

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<sup>31</sup> *The Federal Reserve System—Its Purposes and Functions* (Board of Governors of the Federal Reserve System, Washington, D. C., 1947) p. 1.

bers may, however, withdraw from the System. The national banks may not withdraw and still remain national banks. Since national banks are the only instruments that the Board may count on with any certainty as the means through which to carry out the nation's monetary policy, it is clear that they form the backbone of the Federal Reserve System.

Moreover, the national banks, both from the standpoint of numbers and volume of deposits, form the preponderant element of the System's membership of banks. Thus, as of September 30, 1953 (the last date for which reliable figures are available), there were 6,753 member banks in the Federal Reserve System holding total assets of \$158,227,614,000.<sup>32</sup> Of this number, 4,863 were national banks holding assets of \$106,056,534,000. Of the remaining banks, the 1,890 State member banks of the System held total assets of \$52,171,080,000. The 6,753 member banks held a total of \$35,258,642,000 of time deposits. Of this amount, the national banks held \$24,130,977,000; the State member banks, \$11,127,665,000.<sup>33</sup> The total assets of the

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<sup>32</sup> All figures cited in this paragraph are obtained from Member Bank Call Report No. 129, issued by the Board of Governors of the Federal Reserve System, September 30, 1953, p. 3.

<sup>33</sup> The amount of savings accounts represented in these figures is about 90% of the total amount of time deposits. The last year in which a breakdown was made between savings deposits and other time deposits was 1945. In that year savings deposits in national banks amounted to \$13,631,451,000 as compared to total time deposits of \$14,623,029,000, or 93.2%. Annual Report of the Comptroller of the Currency, 1945, Tables 11 and 37.

member banks of \$158,227,614,000 constitute over 85% of all commercial bank assets in the United States.<sup>34</sup>

The facts that (1) national banks comprise 72% of the member banks of the System, (2) their total assets comprise 67% of the total assets of the member banks and (3) the non-national bank members may withdraw from the System, make it clear beyond question that the national banks are the instruments upon which the Federal Reserve Board must in the last analysis depend to implement the nation's monetary policy entrusted to it by Congress. Anything that impairs the ability of national banks to survive as efficient and prosperous banks in the face of the competition that they meet from State financial institutions impairs in turn the efficiency of the Federal Reserve System to carry out the monetary policy of the nation. That Congress has been aware of this is demonstrated by the fact that it has in the Federal Reserve legislation made available to national banks powers which they need to survive in the face of competition from State financial institutions. Among such powers, in addition to the authority to receive savings deposits and to invest in long-term real estate mortgages, discussed under I,

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<sup>34</sup> This percentage was obtained by comparing the ratio of the total assets of all commercial banks on June 30, 1953 (the last date for which accurate figures are available), of \$181,424,925,000 with the total assets of all member banks on June 30, 1953, of \$154,258,258,000. Board of Governors of the Federal Reserve System. All Commercial Banks in the United States and Possessions—Principal Assets and Liabilities, June 30, 1953, E.4(b); Member Bank Call Report No. 128, issued by the Board of Governors of the Federal Reserve System, June 30, 1953.

*supra*, were the power to engage in branch banking and the power to act as trustee.<sup>35</sup> It would indeed seem far-fetched to believe that Congress, in deliberately legislating to empower national banks to engage in certain activities that would permit them to operate as efficient members of the Federal Reserve System, intended that States might circumscribe any of those powers by legislation favoring State institutions.

**B. Since Savings Deposits Are an Essential Element of a National Bank's Business, Any State Restrictions Affecting the Receipt and Handling of Savings Deposits Will Seriously Hamper National Banks.**

The success of all commercial banks depends upon their ability to obtain loans, *i.e.*, deposits, from their depositors. *First National Bank v. California*, 262 U.S. 366, 370. This statement applies particularly to the time deposits, including the savings deposits, of national banks. By law, a national bank is allowed to make real estate mortgage loans (a profitable source of income to national banks) in an amount equal to the capital stock of such bank paid in and unimpaired plus the amount of its unimpaired surplus fund, or 60% of its time and savings deposits, *whichever is the*

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<sup>35</sup> For a discussion of various powers granted to equalize competition with State banking enterprises, see *infra*, pp. 82-84. For the proposition that Congress deliberately made these powers available to national banks in order that they might be in a position to survive in the face of competition of State financial institutions having like powers, see: Report of the Comptroller of the Currency, 1926, pp. 2-3; *Banking Studies* (Board of Governors of the Federal Reserve System—1941) pp. 50-51; Kent, *Money and Banking* (1947) pp. 302-303; 67 Cong. Rec. 2173, 2839, 3246-47.

*greater.*<sup>36</sup> Since it almost invariably occurs that 60% of the amount of time and savings deposits far exceeds the capital stock and surplus of a national bank, the amount a national bank may lend on real estate loans is limited directly by the amount of its time and savings deposits. Therefore, any restriction upon a national bank which interferes with its ability to accept and handle savings accounts will in turn restrict the amount the bank may lend on real estate, a function expressly authorized by Congress. Furthermore, since the amount of real estate loans cannot exceed 60% of time and savings deposits, there will always be available a minimum of 40% of such deposits for the other operations of the bank. Therefore, any State restriction upon savings deposits will *pro-tanto* restrict the funds available for such other operations.<sup>37</sup>

The importance of time and savings deposits to national banks is found chiefly in their lending operations. In addition to mortgage loans secured by real estate, national banks, of course, make commercial and personal loans. It is obvious that demand deposits alone could not support these lending operations, espe-

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<sup>36</sup> Section 24 of the Federal Reserve Act, 38 Stat. 273, 44 Stat. 1232, as amended, 12 U.S.C. § 371.

<sup>37</sup> The Trial Court, in the instant case, found that the receipt of savings deposits was a very important part of the Bank's business and that the Bank could not function without such deposits (R. 668). It concluded that receiving such deposits was a necessary element in enabling the Bank to prosecute its banking business "and to render the service to the United States Government in maintaining its system of banking and to the public which Congress intended it should" (*ibid.*; see testimony of Arthur T. Roth, President of the Bank, R. 437, 438, 441-442).

cially in view of reserve requirements.<sup>38</sup> Furthermore, demand deposits alone would not support the present capital structure of commercial banks since the earnings from demand deposits would not be sufficient to permit a reasonable return on the capitalization. Profitability is one of the requirements for successful private banking and an important factor determining profitability is the relation of capital to deposits.<sup>39</sup>

Thus, it becomes apparent that any State action interfering with the receipt of savings deposits by national banks would tend to impair their efficiency and their ability to compete effectively with State banking enterprises. In addition to the effect on savings deposits, such action on the part of the State may hamper or impair the efficiency of national banks in other ways. It is a well-known fact that most persons prefer to conduct all of their banking business with one institution. Indeed, this is one reason for the vigorous competition among banks for customers. A customer satisfied with one phase of a bank's operations almost inevitably patronizes the other services offered by the Bank. Thus, a person opening a savings account with a financial institution becomes a potential, or an ac-

<sup>38</sup> The Federal Reserve Board's present reserve requirements are 6% of time deposits and varying percentages of demand deposits, depending upon the bank's location, ranging from 13% to 22% (40 Fed. Res. Bull. 39).

<sup>39</sup> William E. Dunkman, *A Study of Savings and Savings Facilities in New York State, 1941 and 1950*, prepared for The Branch Policy Committee, New York State Bankers Association, p. 114.

tual, customer for the other banking services offered by the institution. He may rent a safe deposit box, open a checking account, finance the purchase of his home or car, borrow on his personal note, handle his commercial loans with the institution, or, if available, utilize the facilities of its trust department. All these services increase the business of the bank and, in most cases, money loaned to a borrower is given by means of a credit to his account from which he draws over a period of time. Therefore, it may readily be seen that a potential customer of the Bank who wishes to open a "savings account" and does not know that national banks accept this kind of account, or one who refuses to place his money other than in a "savings account" (see discussion, *infra*, pages 89-90, 92-93), represents a loss to a national bank, not only of this deposit alone, but also of the potential business that the customer might have brought to the bank.

**C. Section 258(1) Discriminates Against National Banks and Impairs Their Ability to Compete with State Financial Institutions.**

It can hardly be denied that State mutual savings banks and State and federal savings and loan institutions are in severe competition with national banks (and other commercial banks) for savings deposits and that the competition is becoming increasingly intense (R. 155, 411). This competition also extends to the interest rates paid on savings accounts and to mortgage loans on real estate (R. 137, 161-164, 472-473). The proof in this record of competition is convincing.

e testimony was not contradicted that competition between national banks and other financial institutions in Nassau County, which is adjacent to New York City and in which the Bank is located, was "keen" and becoming keener all the time" (R. 155, 409-410). There was further uncontradicted proof that savings banks located in New York City and savings and loan associations located both in New York City and in Nassau County aggressively solicited savings deposits in the County and that savings and loan associations as far away as California also solicited savings accounts in the County (R. 410, 658, Def. Ex. EE, R. 411, 642-642D).

William H. Green, Vice President of the Bank, testified that advertising for savings deposits, as well as for mortgage loans, was engaged in by all types of financial institutions using all available media, including newspapers, direct mail, radio, television, billboards and even umbrellas on rainy days (R. 409). Mr. Green identified certain newspaper advertisements which clearly illustrated the extensive and persistent use of the word "savings" by mutual savings banks and by savings and loan associations (R. 410, Def. Ex. EE, R. 411, 642-642D).<sup>40</sup>

<sup>40</sup> The existence of this competition was recently confirmed by the Report of the Finance Committee of the Senate made in connection with Section 313 of the Revenue Act of 1951, which amended the Internal Revenue Code to subject savings banks and savings and loan associations to income taxation. The Senate Committee reported:

"At the present time, mutual savings banks are in active competition with commercial banks and life insurance com-

It is clear that the State, by prohibiting national banks from using the word "savings" while at the same time permitting mutual savings banks and savings and loan associations to do so, has discriminated against national banks and placed them at a competitive disadvantage with respect to institutions which enjoy the protection of Section 258(1). (See R. 140-142, 156-157.)

The elimination of discrimination against national banks has long been the special concern of Congress which through many enactments has expressed its policy to place these banks in a position to compete successfully, not only with State commercial banks, but also with any bank, corporation or individual competing with some phase of the business of national banks. This Congressional policy was embodied in the original National Bank Act and in many amendments thereto and in the Federal Reserve Act and its amendments. A number of these amendments to the federal banking laws have been enacted to liberalize the restrictions upon, and to enlarge the powers of, national banks in order to equalize the competitive position of

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panies for the public savings, and they compete with many types of taxable institutions in the security and real estate markets. As a result your committee believes that the continuance of the tax-free treatment now accorded mutual savings banks would be discriminatory." (Sen. Rep. No. 781, 82nd Cong., 1st Sess., p. 25.)

See also the statement regarding savings and loan associations made by the Committee. *Id.* at p. 28.

national banks and State banks operating under generally more favorable State laws.

In the National Bank Act, Congress provided that national banks could charge interest at the rates allowed by State law, except where a different rate was specified for banks organized under State law, that rate would be allowed to national banks<sup>41</sup> (13 Stat. 108, R.S. § 5197, 12 U.S.C. § 85). Congress has further provided for competitive equality by authorizing national banks, with the permission of the Board of Governors of the Federal Reserve System, to exercise fiduciary powers if permitted by State law to competing State banks, trust companies or other corporations (40 Stat. 968, 12 U.S.C. § 248(k)). In furtherance of the same purpose, national banks may establish branches in those States where State banks are permitted by State law to operate branches (44 Stat. 1228, 12 U.S.C. § 36). In 1930, Congress relaxed the prohibition against the pledge of assets by national banks to allow them to provide security for the deposit of public moneys if State law authorized State banking institutions to give such security (46 Stat. 809, as amended, 64 Stat. 463, 12 U.S.C. § 90). In the field of taxation, Congress has permitted certain State taxation of national

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<sup>41</sup> A more recent indication of Congressional intent to equalize competition between national banks and State banks with regard to interest may be found in the provision in Section 24 of the Federal Reserve Act that national banks may pay interest on time and savings deposits equal, but not in excess of, the maximum rate authorized by law to be paid by State banks (38 Stat. 273, 44 Stat. 1232, as amended, 12 U.S.C. § 371, discussed *supra*, pp. 38-44).

banks from the time of the original National Bank Act, but has specified that the rate should be no higher than usually imposed by the taxing State on other financial corporations. And in the case of the taxation of the shares of stock of national banks, Congress has provided that the tax must not be assessed at a greater rate than that upon other moneyed capital. (R.S. § 5219, 42 Stat. 1499, as amended, 12 U.S.C. § 548.)

This Court has consistently recognized and supported the well understood purpose of Congress, reflected in the National Bank Act, the Federal Reserve Act and their amendments, to clothe national banks with the necessary powers to meet State banks and other State banking or financial institutions on a plane of competitive equality. As this Court stated in *Tiffany v. National Bank of Missouri*, 18 Wall. 409, 412:

“ \* \* \* It cannot be doubted, in view of the purpose of Congress in providing for the organization of national banking associations, that it was intended to give them a firm footing in the different States where they might be located. It was expected they would come into competition with State banks, and it was intended to give them at least equal advantages in such competition.”

Similar expressions of this Court and other courts of this principle are found in *First National Bank v. Fellows*, 244 U.S. 416, 425; *First National Bank v. Hartford*, 273 U.S. 548, 557; *Mount Pleasant National Bank v. Duncan*, Fed. Cas. No. 4804; *Downey v.*

*Bankers*, 106 F. 2d 69, *affirmed*, 309 U.S. 590; *F.D.I.C. v. Tremain*, 133 F. 2d 827; *Boatmen's National Bank v. St. Louis v. Hughes*, 385 Ill. 431, 53 N.E. 2d 403; *Wushton ex rel. Commissioner of Banking v. Michigan National Bank*, 298 Mich. 417, 299 N.W. 129.

The State, before the Court of Appeals, met the presentation of these Congressional acts and the decisions of this Court upholding them with the rather remarkable assertion that all that was revealed was a Congressional policy to subordinate national banks to State law and to require them to conform to State standards. But the exact contrary is revealed. Far from indicating an intent on the part of Congress to limit the powers of national banks, the acts and amendments we have discussed show an intent to liberalize particular restrictive laws governing national banks to enable them to compete more effectively with State banks, including savings banks and any other institution or individual carrying on a business in competition with them. See *Burnes National Bank v. Duncan*, 265 U.S. 17.

The State, of course, has asserted that it in no way attempts to interfere with the receipt of savings deposits by national banks, and the Court of Appeals disclaims any desire on the part of the State to claim a monopoly for the privileged institutions of what it terms " 'savings' type deposits" (R. 688). Yet, when the State prohibits the competing institutions from using an effective means of soliciting this type of deposits, the inevitable effect of the enforcement of Sec-

tion 258(1) is to arm its own institutions with a potent competitive device which can be employed in a manner tending toward monopoly. This the State cannot do. It cannot, under a claim that it is protecting its own citizens, deprive national banks of their right to compete openly with other institutions, State and federal, for the savings of the individual. See *Burnes National Bank v. Duncan*, 265 U. S. 17, in which Mr. Justice Holmes, in discussing an attempt by the State of Missouri to keep all trust powers in the hands of State trust companies, although national banks had been authorized to exercise trust powers in States in which competing institutions held such powers, said:

“The fact that Missouri has regulations to secure the safety of trust funds in the hands of its trust companies does not affect the case. The power given by the act of Congress purports to be general and independent of that circumstance and the act provides its own safeguards. The authority of Congress is equally independent, as otherwise the State could make it nugatory.” (*Id.* at 24.)

The Court of Appeals did not answer the Bank's contentions regarding the discriminatory nature of the State statute, but merely pointed out that there are differences between commercial banks and mutual savings banks and that savings and loan associations are entitled to the same protection as mutual savings banks (R. 688, 689-690). The Appellate Division, however, expressly stated that the State law was not discriminatory because the statute applied to all commercial

banks, both State and national, and that savings banks which operate under different conditions constitute a separate class entitled to different legislative treatment (R. 682).

The question is not whether a savings bank or a savings and loan association is a different type of institution from a national bank. The significant fact is that, in an important phase of their respective operations, *viz.* the obtaining and investment of savings deposits, savings banks and savings and loan associations are in direct competition with national banks. It is clear that, in the operation of their savings departments, which they are duly authorized by Congress to maintain, national banks are entitled to the same classification as mutual savings banks and savings and loan associations. Indeed, so far as the receipt and investment of savings deposits are concerned,<sup>42</sup> there is no basis whatsoever for any valid distinction—a fact expressly recognized by Congress as late as 1951. (See Sen. Rep. No.

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<sup>42</sup> There is no difference in the relationship which exists, on the one hand, between a savings depositor and a mutual savings bank and, on the other hand, between a savings depositor and a national bank. The depositor in both cases is a creditor having no proprietary interest in the enterprise (R. 664). Persons depositing savings with savings and loan associations bear a somewhat different relationship to the institution. A savings and loan association does not receive deposits; it merely sells shares. And its capital consists of what would be savings accounts in other institutions, the holders of which are not creditors but only shareholders. Such shareholders have a right to vote on corporate matters but do not have an absolute right of payment as do depositors in mutual savings and commercial banks. See Rules and Regulations for the Federal and Savings and Loan Association, 24 C.F.R. §§ 141-148.

It is interesting to note that New York mutual savings banks hold a small amount of demand deposits. Report No. 38, Dec. 31, 1952, Federal Deposit Insurance Corporation, p. 63.

781, 82nd Cong., 1st Sess., pp. 25, 28, quoted in footnote 40, *supra*, pp. 81-82.)

A similar point was recognized in *First National Bank v. Hartford*, 273 U. S. 548. This Court, speaking of the Congressional legislation aimed at the discriminatory taxation of national banks (42 Stat. 1499, 12 U. S. C. § 548), held that it was designed "to prevent the fostering of unequal competition with the business of national banks \* \* \* by institutions or individuals engaged either in similar businesses or in particular operations or investments like those of national banks" (*Id.* at 558; emphasis supplied). The Court emphasized that the important fact was not the character of the competing business unit but the nature of the competing operations (*Id.* at 557).

It, accordingly, is clear that national banks are in competition with State mutual savings banks and all savings and loan associations and that the State has weighted that competition in favor of the State protected institutions by granting them a competitive advantage which it denies to national banks. This is discrimination against national banks which is contrary to the long maintained policy of Congress as upheld by this Court. The New York law, therefore, is invalid as applied to national banks.

**D. Section 258(1) Unduly Interferes With the Operations and Impairs the Efficiency of National Banks.**

The Court of Appeals recognized that State laws which substantially impair the operations of national banks are invalid (R. 686-687). It concluded, however,

that the New York law does not impede national banks in carrying out their lawful operations (R. 686-689). That the court's conclusion in this regard was erroneous will now be shown.

We have discussed the great importance of savings deposits to national banks, *supra*, pages 77-80, and have developed that these banks would not be able without savings accounts properly to carry on their banking operations and discharge their functions as national banks. We have shown how severe is the competition between national banks and other institutions for savings deposits and how aggressively mutual savings banks and savings and loan associations in New York City and the adjacent County of Nassau advertise for such deposits by emphasizing the word "savings." It is with respect to this competition that the denial of the use of the word "savings" severely handicaps national banks and compels them to use substitute expressions which are not understood by, but only serve to confuse, the public. The result is a loss of existing or potential accounts and a severe interference with the banks' operations.

These substitute expressions—"thrift account," "special interest account" and "compound interest account"—forced on national banks by the prohibition contained in Section 258(1) were the subject of much consideration at the trial of this case. There was testimony that they had little appeal to the public; that customers withdrew money from national banks to deposit in savings banks because they did not know that the former handled "savings" accounts and that for the

same reason a substantial amount of business, necessarily immeasurable, was not given to national banks (R. 110, 142, 152, 158). Several presidents of national banks with long experience as banking officers testified that their banks were directly and substantially hampered by their inability to use the word "savings" and that the effect of this handicap was reduced earnings (R. 104, 110, 149). The testimony was that the use of the substitute expressions in appealing to the public for savings was futile and that the use of the word "savings" attracts more depositors than use of substitute expressions<sup>43</sup> (R. 140, 142).

Apparently recognizing the ineffectiveness of the substitute expressions in attracting depositors, the

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<sup>43</sup> The New York Superintendent of Banks, in rather curious fashion, confirmed the testimony of these national bank officers that their inability to use "savings" in appealing to the public for deposits places national banks at a competitive disadvantage. When the Appellate Division ordered that the Bank be enjoined under Section 258(1) from using the word "savings," the Superintendent of Banks filed an affidavit in opposition to the Bank's motion for a limited stay of the injunction pending appeal to the Court of Appeals. One of the principal grounds for the opposition was that, if the Bank were not enjoined, its continued use of the word "savings" would give it an "unfair" and "competitive" advantage over other competing national and State commercial banks and that, to avoid the "*resulting competitive disadvantage*," other banks might be induced to violate the law. (Emphasis supplied.) Thus, the Superintendent of Banks, perhaps unwittingly, repeated the very reasons the Bank has advanced to show that the State law discriminates against it and interferes with its operations. (This affidavit of the Superintendent of Banks, dated February 20, 1953, was not printed as a part of the Record; it was, however, transmitted by the New York court in this case to the Clerk of this Court.)

State before the Trial Court (R. 489-490) and the Court of Appeals made the rather astonishing suggestion that national banks should attempt, through an extensive (and necessarily expensive) advertising campaign, to educate the public in the meaning of the terms used in lieu of "savings." The thought was, apparently, that these banks had been remiss in not publicizing these expressions, and, by intensive advertising, such terms as "special interest" and "thrift" accounts could be identified in the public's mind with national banks in the same fashion that certain catch phrases are identified with particular brands of cigarettes. Even if it be assumed that any such campaign could be successful with the use of the word "savings" barred, the Attorney General was apparently unaware that, by forcing national banks into expensive advertising outlays from which the State-favored institutions are spared, he is conceding that the State is discriminating against national banks and substantially burdening and handicapping them in their efforts to compete with the privileged institutions. Furthermore, with Arthur R. Seaton, Sr., a State Bank Examiner, testifying in this case that these substitute expressions are the "equivalent" of "savings" (R. 63), a statement later confirmed by the Court of Appeals which deemed them "synonymous" with "savings" (R. 688-689), it is strange that the Attorney General would urge the publicizing by national banks through extensive advertising of words which are prohibited by the very language of Section 258(1).

Proof was received at the trial through the Hofstra Survey, confirming the opinion of the bank experts, that the substitute expressions forced upon national banks were not understood by the public, while the meaning of "savings" accounts was understood and that the public does not know that it can open "savings" accounts with national banks. This Survey was carefully and scientifically conducted under the supervision of the Psychology Department of Hofstra College to determine how much knowledge the adult population of Nassau County possessed regarding the meaning of "savings" and the substitute expressions, which kind of account they preferred and what type of institution they preferred in which to open an interest-bearing account.<sup>44</sup>

The Hofstra Survey made the following significant findings:

- (a) Although 85.8% could accurately describe a savings account, only 40.8%, 21.4% and 19.5% respectively, could accurately describe a compound interest account, special interest account and thrift account (Def. Ex. CC, Table I, R. 358, 626).

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<sup>44</sup> The careful manner in which the survey was conducted was the subject of detailed evidence at the trial (R. 172-279, 346-401; Def. Exs. D-U, Z-DD, R. 621-625, 626-641, 660-661), and the trial judge made a careful analysis of the methods of conducting the survey in deciding that it was admissible in evidence (R. 662-664). See also *United States v. 88 Cases*, 187 F. 2d 967; Sorensen and Sorensen, *The Admissibility and Use of Opinion Research Evidence*, 28 N. Y. U. L. Rev. 1213-1261.

- (b) 51.3% knew that mutual savings banks handle savings accounts, while only 7% knew that national banks likewise handle this type of account <sup>45</sup> (Def. Ex. CC, Table VII, R. 358, 629-630).
- (c) 57.7% preferred to open a savings account when they wanted to deposit money at interest, while only 21.9%, 10.7% and 1.2%, respectively, preferred a compound interest account, special interest account and thrift account (Def. Ex. CC, Table XIII, R. 358, 634).

As the Trial Court found, the Hofstra Survey proved that the public understands the "meaning of the term 'savings' account for what it really is far better than it understands the meaning of any of the substitute terms" (R. 662), and that, on the basis of all the proof of record (and judicial notice), the word "savings" provokes a much stronger appeal to the eye and the understanding of persons disposed to open an interest-bearing account than do the terms which perforce must be used in their place (R. 662). <sup>46</sup> For these and the

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<sup>45</sup> See footnote 3, *supra*, p. 9.

<sup>46</sup> The Trial Court also suggested strongly that the legislative protection which the State had afforded mutual savings banks' depositors in the past was no longer necessary since the United States Government had insured (through the Federal Deposit Insurance Corporation) all deposits, including those in mutual savings banks, up to the amount of \$10,000 each. It noted that \$10,000 is the maximum amount which such mutual savings banks can now accept from other depositors. (R. 665.) It is interesting to note that all mutual savings banks in the State of New York

other reasons developed at the trial, the Trial Court found that the prohibition contained in Section 258(1) restricts and hampers the Bank in obtaining savings deposits and amounts to an impairment of its business (R. 668).

The Trial Court also held that Section 258(1) was broad enough to prevent the use by the Bank of the word "savings" on any sign, as an identification of the place where such deposits were received, on deposit slips and pass books, in any oral or written advertising, or even to set forth the forbidden words in any of its accounting records or reports to the Comptroller of the Currency (R. 667-668). The court could well have added that the statute is broad enough to prohibit any use by national banks of the word "savings" in connection with the sale or redemption of United States Sav-

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belong to the Federal Deposit Insurance Corporation (1952 Annual Report of the Federal Deposit Insurance Corporation, p. 52) and that, within a few months of the approval of the Act of Congress of September 21, 1950 (64 Stat. 873, 12 U. S. C. § 1821a) increasing the maximum insurance protection for each bank account to \$10,000, the State of New York increased from \$7,500 to \$10,000 the limit which a savings bank was permitted to accept from one depositor (L. 1951, Ch. 592. See R. 311-313).

It should also be noted that savings and loan association "accounts" are likewise insured up to \$10,000 through the Federal Savings and Loan Insurance Corporation, of which most savings and loan associations are members (R. 311).

Judge Fuld, in a footnote to his dissent to the Court of Appeals' opinion, stated that the \$10,000 insurance protection had virtually eliminated any risk of loss to those who maintain savings accounts in national banks (R. 691).

ings Bonds or in connection with any payroll "savings" plan to further the sale of these bonds.<sup>47</sup>

The Court of Appeals, in affirming the Appellate Division's reversal of the Trial Court's judgment, did not specifically set aside any of the latter's findings that the State law seriously hampers and interferes with the operations and the efficiency of national banks. It did state that it was "significant, although not conclusive," that no other national bank in the State had used the word "savings,"<sup>48</sup> and that all other such banks had been able to carry on the business of receiving this "type of deposit" by the use of the "synonymous" substitute expressions; that, further, the number of "savings type" accounts in national banks had increased and they had enjoyed continued prosperity in operating under the State statute (R. 688-689). In the light of the actual effects of the

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<sup>47</sup> The injunction, in the form ordered by the Appellate Division and even in the form as modified by the Court of Appeals (R. 676 and 690), is clearly broad enough to prohibit any reference by the Bank to United States Savings Bonds in its dealings with the public. The Appellate Division stated that the statute did not prohibit the Bank's handling of these bonds since this was the "Government's business" (R. 682). However, it is also the Bank's business as the agent of the Government and neither the statutory language nor the injunction against the Bank provides any exception. The Court of Appeals' opinion did not mention this point, although it was called to its attention by the Bank.

<sup>48</sup> This is an erroneous statement, see footnote 4, p. 13, *supra*. It is also immaterial since even long time compliance with a State law regulating banking does not foreclose the right to challenge the validity of the law. See *Abie State Bank v. Bryant*, 282 U. S. 765, 766.

operation of Section 258(1), as demonstrated by the Hofstra Survey and the testimony of the several bank presidents referred to above, the conclusion of the Court of Appeals that the savings accounts of national banks have increased and that they have enjoyed continued prosperity becomes largely irrelevant. Obviously, savings deposits might increase and earnings continue even though the statute operated directly to handicap national banks. It is clear that the business might grow, even prosper, despite the existence of handicaps and heavy burdens. The facts are not inconsistent. Thus, it was shown at the trial of this case that the dollar increase in savings deposits was due to an increase of money in circulation and to inflation and that savings in national banks have substantially decreased in relation to demand deposits (R. 112). It was proved that savings in national banks, including the Bank, have substantially decreased in relation to demand deposits.<sup>40</sup> (R. 444-452). Significantly, the Bank demonstrated statistically that savings deposits in national banks have decreased in relation to savings deposits in savings banks and savings and loan associations (Def. Ex. NN, R. 445, 649-652). The consequence is clear: general statements regarding growth and prosperity of national banks do not prove that the State statute does not substantially burden or interfere with their business.

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<sup>40</sup> The Bank's savings deposits had declined proportionately from over 60% of total deposits in 1941 to approximately 42% in January, 1951 (R. 436; Def. Ex. MM, R. 435, 649).

Since the New York law unduly interferes with the operations and impairs the efficiency of national banks, it must be held invalid as applying to those banks under the authority of the many decisions of the Court which we have set forth in the earlier portions of this brief.

### **CONCLUSION.**

Section 258(1) of the New York Banking Law is in direct conflict with the paramount laws of the United States authorizing national banks to receive savings deposits and with the pertinent administrative rulings. This law also discriminates against national banks and impedes their ability to compete with State financial institutions. By interfering with the receipt of savings deposits and the operations of a savings business, the State law impedes and hampers the efficiency of national banks and renders them less effective as instrumentalities of the United States in providing a uniform, well-regulated banking system for the people of the United States and in serving as component members of the Federal Reserve System. Under long-standing precedents of this Court, the State law is unconstitutional and invalid as applied to national banks.

This case, as was set forth in the Statement as to Jurisdiction, affects not only the Franklin National Bank but also all national banks in the State of New York. Moreover, the decision of the Court of Appeals, unless it is reversed by this Court, will be considered a precedent by other States which may well be induced thereby to enact restrictive legislation covering advertising and other phases of the operations of national

banks and thus weight the competition heavily against national banks and in favor of State financial institutions.

The decision of the court below should be reversed.

Respectfully submitted,

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**APPENDIX**

Article VI, Clause 2 of the Constitution of the United States provides:

“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

The pertinent language of Sections 24 and 19 of the Federal Reserve Act (12 U.S.C. §§ 371, 461) provides:

“§ 371. *Loans on farm lands and improved real estate; time and savings deposits; loans for construction of residential or farm buildings.*

“Any national banking association may make real-estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by a mortgage, trust deed, or other instrument upon real estate, which shall constitute a first lien on real estate in fee simple or, under such rules and regulations as may be prescribed by the Comptroller of the Currency, on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the loan is made or acquired

by the national banking association, and any national banking association may purchase any obligation so secured when the entire amount of such obligation is sold to the association. The amount of any such loan hereafter made shall not exceed 50 per centum of the appraised value of the real estate offered as security and no such loan shall be made for a longer term than five years; except that (1) any such loan may be made in an amount not to exceed 60 per centum of the appraised value of the real estate offered as security and for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize 40 per centum or more of the principal of the loan within a period of not more than ten years, and (2) the foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real-estate loans which are insured under the provisions of sections 1707-1715, 1715b-1715h, 1736-1746, 1748-1748h, 1706c of this title or subchapter X of chapter 13 of this title or which are insured by the Secretary of Agriculture pursuant to sections 1001-1005d of Title 7. No such association shall make such loans in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of 60 per centum of the amount of its time and savings deposits, whichever is the greater. Any such association may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such

association may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such association is located."

*"§ 461. Demand and time deposits defined.*

"The Board of Governors of the Federal Reserve System is authorized, for the purposes of this section and sections 142, 371a, 371b, 374, 374a, 462, 462a-1 to 466 of this title, to define the terms 'demand deposits', 'gross demand deposits', 'deposits payable on demand', 'time deposits', 'savings deposits', and 'trust funds', to determine what shall be deemed to be a payment of interest, and to prescribe such rules and regulations as it may deem necessary to effectuate the purposes of such sections and prevent evasions thereof: *Provided*, That, within the meaning of the provisions of such sections regarding the reserves required of member banks, the term 'time deposits' shall include 'savings deposits'. (Dec. 23, 1913, ch. 6, § 19, 38 Stat. 270; June 21, 1917, ch. 32, § 10, 40 Stat. 239; Aug. 23, 1935, ch. 614, § 324(a), 49 Stat. 714.)"

The pertinent language of Section 24(Seventh) of the National Bank Act (12 U.S.C. § 24) provides:

*§ 24. Corporate powers of associations*

"Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts,

bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this chapter. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: \* \* \*

The pertinent language of Section 258(1) of the New York Banking Law provides:

“1. No bank, trust company, national bank, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word ‘saving’ or ‘savings’ or their equivalent in its banking or financial business, or use any advertisement containing the word ‘saving’ or ‘savings,’ or their equivalent in relation to its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank; but nothing herein shall be construed to prohibit the use of the word ‘savings’ in the name of the Savings and Loan Bank of the State of New York or in the name of a trust company all of the stock of which is owned by not less than twenty savings banks. Any bank, trust company, national bank, individual, partnership, unincorporated association or corporation violating this provision shall forfeit to the people of the state for every offense

the sum of one hundred dollars for every day such offense shall be continued."

Section 1 (e) of Regulations D and Q of the Board of Governors of the Federal Reserve System provides as follows (24 C.F.R. §§ 204.1, 217.1):

"(e) Savings deposits.—The term 'savings deposit' means a deposit, evidenced by a pass book, consisting of funds (i) deposited to the credit of one or more individuals, or of a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for profit,<sup>4</sup> or (ii) in which the entire beneficial interest is held by one or more individuals or by such a corporation, association or other organization, and in respect to which deposit—

(1) The depositor is required, or may at any time be required, by the bank to give notice in writing of an intended withdrawal not less than 30 days before such withdrawal is made;

(2) Withdrawals are permitted in only two ways, either (i) upon presentation of the pass

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<sup>44</sup> Deposits in joint accounts of two or more individuals may be classified as savings deposits if they meet the other requirements of the above definition, but deposits of a partnership operated for profit may not be so classified. Deposits to the credit of an individual of funds in which any beneficial interest is held by a corporation, partnership, association or other organization operated for profit or not operated primarily for religious, philanthropic, charitable educational, fraternal or other similar purposes may not be classified as savings deposits.

book, through payment to the person presenting the pass book, or (ii) without presentation of the pass book, through payment to the depositor himself but not to any other person whether or not acting for the depositor.<sup>5</sup>

“The presentation by any officer, agent or employee of the bank of a pass book or a duplicate thereof retained by the bank or by any of its officers, agents or employees is not a presentation of the pass book within the meaning of this regulation except where the pass book is held by the bank as a part of an estate of which the bank is a trustee or other fiduciary, or where the pass book is held by the bank as security for a loan. If a pass book is retained by the bank, it may not be delivered to any person other than the depositor for the purpose of enabling such person to present the pass book in order to make a withdrawal, although the bank may deliver the pass book to a duly authorized agent of the depositor for transmittal to the depositor.

“Every withdrawal made upon presentation of a pass book shall be entered in the pass book at the time of the withdrawal, and every other withdrawal shall be entered in the pass book as soon as practicable after the withdrawal is made.”

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<sup>5</sup> Presentation of a pass book may be made over the counter or through the mails; and payment may be made over the counter, through the mails or otherwise, subject to the limitations of paragraph (2) above as to the person to whom such payment may be made.”